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Witnesses on behalf of Interborough Rapid Transit Company:

	Direct	Cross	Redirect	Recross
William F. Reeves	271	296	317	323
			324	
			701	702
George W. Burpee	325	331		
	333	341	370	384
			386	
	404	407	412	415
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	514	628	645	
			657	664
	1011	1016		
	1021	1026	1031	
Harold L. Coe	387			
	833			
Herbert J. Fraser	389	390		
Otis E. Hovey	417	420		
	421	425	430	
William F. Harden	431	434		
	436	438	440	
		440		
Frank D. Allen	442	451		
	506	507		
	991			
Frank B. McCord	508	511	513	513
			514	
Sylvester D. Smith	572			
Michael F. Fox	654			
George Keegan	666	689	692	694
			698	
		699		
Amos Schaeffer	764	778	781	782
Frederick William Schoonmaker	815			
Edward D. DeForrest	825	831	832	833
			833	
Robert Huntley	834	855	929	943
			977	979
George H. Pegram	994	998	1007	

Witnesses on behalf of the City of New York:

	Direct	Cross	Redirect	Recross
John C. Brackenridge	458	462		
	466	471	498	502
			785	793
			812	
	1034	1037		
Louis Marder	576			
Charles A. Standfast	579	583	589	590
John Bauer	590			
	703	705	751	757
			761	762
	1042	1051		
		1055		
Gabriel Steinberg	625			
John S. Bruce	626	627		
Henry Brady	950	954	966	968

Exhibits of the City of New York:

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Order appointing Extraordinary Term of Supreme Court (Ex. 1)	235	144 1083
Affidavit of S. Wolfenden, ver. Sept. 20, 1923, showing publication of Governor's order appointing Extraordinary Term of Supreme Court in N. Y. Herald on Sept. 17 & 20, 1923 (Ex. 2)	235	1083
Affidavit of Jno. J. Cosgrove, ver. Sept. 20, 1923, showing publication of Governor's order appointing Extraordinary Term of Supreme Court in N. Y. Law Journal on Sept. 17 & 20, 1923 (Ex. 3)	235	1084
Affidavit of Albert H. Johannes, ver. Sept. 20, 1923, showing publication of Governor's order appointing Extraordinary Term of Supreme Court in N. Y. World on Sept. 17 & 20, 1923 (Ex. 4)	235	1085

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Affidavit of Chas. W. Jaros, ver. Sept. 20, 1923, showing publication of Governor's order appointing Extraordinary Term of Supreme Court in N. Y. Times on Sept. 17 & 20, 1923 (Ex. 5)	236	1086 1086
Chap. 788, Laws of 1917 (Ex. 6)	236	1877
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Chap. 635, Laws of 1923, amending Chap. 788, Laws 1917 as amended by Chap. 611, Laws of 1919 (Ex. 8)	236	1087 1877
Resolution of Board of Estimate and Apportionment adopted Dec. 5, 1919 authorizing President of Borough of Manhattan to take up negotiations with Manhattan Railway Co. for removal of tracks, etc., constituting the spur (Ex. 9)	237	1087
Pages 6350 to 6352 inc. of minutes of Board of Estimate and Apportionment of meeting of Nov. 26, 1920, being a letter from President of Borough of Manhattan to Board of Estimate and Apportionment stating that no agreement could be reached between him and railway company as to removal of spur (Ex. 10)	237	1088
Resolution of Board of Estimate and Apportionment adopted Jan'y 14, 1921, requesting Public Service Commission to institute proceeding and conduct hearing to determine matters specified in Chap. 788, Laws of 1917, as amended by Chap. 611, Laws of 1919 (Ex. 11)	238	1094
Order and determination of Public Service Commission, dated Apr. 22, 1921 —Case No. 2582 (Ex. 12)	238	1096

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Certificate issued by Public Service Commission, dated Apr. 22, 1921—Case No. 2582 (Ex. 13)	239	1102
Resolution of Board of Estimate and Apportionment adopted Sept. 30, 1921, directing institution of proceedings to condemn and remove tracks, etc., constituting the spur (Ex. 14)	239	81 1109
Resolution of Board of Estimate and Apportionment adopted June 29, 1923, amending resolution adopted Sept. 30, 1921 (Ex. 15)	240	84 1109
Notice of application of City for order to condemn (Ex. 16)	240	94 1109
Petition of City, ver. July 13, 1923, and rule map attached, for order to condemn (Ex. 16)	240	99 1109
Affidavit of J. Osgood Nichols submitted in opposition to petition of City (Ex. 16)	240	1110
Reply affidavit of Albert T. Swords submitted on behalf of City (Ex. 16)	240	1117
Affidavit of Viertel, of McCormick and of Murty as to publication of notice of application of City for order to condemn in City Record and as to posting same (Ex. 16)	240	123 124 1119
Order of Special Term entered July 18, 1923, granting application of City to condemn (Ex. 16)	240	125 1119
Claim of Manhattan Railway Co. (Ex. 17 for Ident.)	241	129 1119
Claim of Interborough Rapid Transit Co. (Ex. 18 for Ident.)	241	131 1120
Draft Damage Map filed in N. Y. Co. Clerks office on July 19, 1923 (Ex. 19)	241	1120 1888 141
Notice of Trial (Ex. 20)	241	1120

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Detailed statement showing cost to reproduce and depreciated value as of Nov. 1, 1923 of 42nd St. Elevated Spur from Park to 3rd Aves., prepared by Jno. C. Brackenridge (Ex. 22)	468	1121
Estimated cost to reproduce as of Nov. 1, 1923, stairway and canopy for same at Park Ave. and 42nd St., prepared by Jno. C. Brackenridge (Ex. 23)	469	1125
Report of Ticket Sales for 1918 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 24)	577	1126
Report of Ticket Sales for 1919 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 25)	577	1126
Report of Ticket Sales for 1920 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 26)	577	1126
Report of Ticket Sales for 1921 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 27)	577	1126
Report of Ticket Sales for 1922 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 28)	577	1126
Report of Ticket Sales for 1923 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 29)	577	1126
Report of Ticket Sales for January, February, March, and April, 1924, of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 30)	577	1126
Annual Report for 1919 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 31)	578	1126
Annual Report for 1920 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 32)	578	1126

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Annual Report for year 1921 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 33)	578	1126
Annual Report for year 1922 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 34)	578	1126
Annual Report for year 1923 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 35)	578	1126
June monthly reports for the years 1919 to 1923, inc. of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 36)	578	1126
Count of passengers using 42nd St. shuttle at 42nd St., and Park Ave., Nov. 20th and 21st, 1923 (Ex. 37)	580	1129
Tabulation showing results of card canvas of passengers using shuttle trains on 42nd St. Spur of 3rd Ave. Elevated Line, Nov. 21, 1923 (Ex. 38)..	582	1130
Statement showing ticket sales and actual count of tickets deposited in cancelling box at Grand Central Station, 3rd Ave. Line, from Apr. 1 to Apr. 7, 1921, made by Jno. S. Bruce (Ex. 39)	582	1132
Tabulation showing revenues assignable to 42nd St. Elevated Spur for fiscal years (1919 to 1923) ended June 30, prepared by Jno. Bauer (Ex. 40 for Ident.; Ex. 40)	598 603	1133
Letter, dated Jan'y 7th, 1924, from J. L. Quackenbush, General Counsel of Interborough Rapid Transit Co. to L. H. LaMotte, containing certain data (Ex. 41)	601	1134
Tabulation showing operating expenses and taxes chargeable against 42nd St. Elevated Spur for each of fiscal		

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years (1919 to 1923) ended June 30th, prepared by Jno. Bauer (Ex. 42 for Ident.; Ex. 42)	603 606	1137
Tabulation showing ticket sales at designated Elevated and Subway stations at 42nd St. from 1900 to 1923, prepared by Jno. Bauer (Ex. 43 for Ident.; Ex. 43)	609 616	1138
Resolution of Board of Estimate and Apportionment adopted Nov. 23, 1923, vesting title herein (Ex. 44)	623	89 1139
Lease, Manhattan Railway Co. and Interborough Rapid Transit Co., dated Jan'y 1, 1903, for 999 years (Ex. 45)	624	1139
Supplementary agreement, Manhattan Railway Co. with Interborough Rapid Transit Co. dated Mar. 15, 1913 (Ex. 45A)	624	1181
Supplementary agreement, Manhattan Railway Co. with Interborough Rapid Transit Co., dated Oct. 22, 1913 (Ex. 45B)	624	1190
Supplementary agreement, Manhattan Railway Co. with Interborough Rapid Transit Co., dated Feb'y 17, 1916 (Ex. 45C)	624	1196
Sixteen (16) Photographs showing north and south sides of 42nd St. between Park and 3rd Aves. including structures and abutting properties (Exs. 46A to 46P)	626	1204 1884 1892
Order and determination of Transit Commission in Case No. 2704 (Ex. 47)	627	1204
Certificate of Transit Commission in Case No. 2704, pursuant to Sec. 53, Public Service Commission Law (Ex. 48)	627	1210

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Statement showing dates when turnstiles on all lines crossing 42nd St. were placed in operation (Ex. 49)	628	1214
Statement showing ticket sales at 42nd St. Station on 3rd Ave. Line for years 1919 to 1923 and Jan'y, Feb'y, Mar. & Apr., 1924, prepared by Jno. Bauer (Ex. 50)	703	1215
Statement showing ticket sales at 6th Ave. and 42nd St. Elevated for years 1922 and 1923 and Jan'y, Feb'y, Mar. and Apr. 1924, prepared by Jno. Bauer (Ex. 51)	704	1216
Statement showing ticket sales for 23rd St. Station on 3rd Ave. Elevated Line for years 1922 and 1923, and Jan'y, Feb'y, Mar. and Apr., 1924, prepared by Jno. Bauer (Ex. 52)	704	1217
Statement showing ticket sales for 42nd St. Station on 2nd Ave. Elevated Line for years 1922 and 1923 and Jan'y, Feb'y, Mar. and Apr., 1924, prepared by Jno. Bauer (Ex. 53)	704	1218
Statement showing ticket sales for 34th St. Station on 3rd Ave. Elevated Line for years 1922 and 1923 and Jan'y, Feb'y, Mar. and Apr., 1924, prepared by Jno. Bauer (Ex. 54)	704	1219
Statement showing subway ticket sales for Grand Central Subway Station at 42nd St. for years 1922 and 1923 and Jan'y, Feb'y, Mar. and Apr., 1924, prepared by Jno. Bauer (Ex. 55) ..	704	1220
Statement showing ticket sales for Times Square Subway Station at 42nd St. for years 1922 and 1923 and Jan'y, Feb'y, Mar. and Apr., 1924, prepared by Jno. Bauer (Ex. 56)	705	1220
Statement showing monthly ticket sales at Grand Central Station of Elevated		

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Division of I. R. T. Co. for fiscal years 1920 to 1923 and Jan'y, Feb'y, Mar. and Apr., 1924, ended June 30th, prepared by Jno. Bauer (Ex. 57)	705	1221
Chart showing monthly ticket sales or turnstile entries at Grand Central Station of Elevated divisions of I. R. T. Co., registered July, 1919, to demolition, prepared by Jno. Bauer (Ex. 58)	755	1221 1894
Certificate of Transit Commission in Case No. 2704, pursuant to Chap. 635, Laws of 1923 (Ex. 59)	782	1222
Tabulated statement prepared by Jno. C. Brackenridge showing schedule of operation, estimated earnings and expenses—value of 42nd St. Elevated Spur as railroad in operation as part of entire Manhattan Elevated system (Ex. 60)	789	1228
Detailed estimated cost of changes required at 42nd St. and 3rd Ave. by removal of spur made by Jno. C. Brackenridge (Ex. 61A)	1035	1230
Statement prepared by Jno. Bauer showing compilation of monthly ticket sales of 3rd Ave. Elevated at Grand Central and 42nd St. and 3rd Ave., years 1922, 1923 and Jan'y, Feb'y, Mar. and Apr., 1924 (Ex. 62 for Ident.; Ex. 62)	1042 1043	1235
Statement prepared by Jno. Bauer showing comparison of I. R. T. elevated ticket sales, 3rd Ave. Line at 42nd St. and at 34th St. for years 1923 and 1924 (Ex. 63 for Ident.; Ex. 63)	1043	1236
Statement prepared by Jno. Bauer showing tabulation of ticket sales, 3rd Ave. Line at 42nd St., Grand Central		

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and 34th St. from Jan'y, 1919 to	1043	
Aug. 1925 (Ex. 64 for Ident.; Ex. 64)	1046	1237
Statement prepared by Jno. Bauer showing comparison of ticket sales, 3rd Ave. Line at 42nd St. and at 34th St. for first seven months in 1923, 1924	1046	
and 1925 (Ex. 65 for Ident.; Ex. 65)	1047	1238
Photograph of Station of 3rd Ave. Elevated Road at 42nd St. looking east after removal of Spur but before station improvements had been made (Ex. 66)	1065	1238 1884 1896
Photograph of station of 3rd Ave. Elevated Road at 42nd St. looking east from a point west after station improvements had been made (Ex. 67)	1065	1238 1884 1898
Photograph of station of 3rd Ave. Elevated Road at 42nd St. looking west from east of station after stairway at northeast corner had been constructed (Ex. 68)	1065	1238 1884 1900
Stipulation covering certain facts in case (Ex. 69)	1067	1239

Exhibits of Interborough Rapid Transit Company:

Extracts from Vols. 1 and 2 entitled: Manhattan Railway Company; organization; franchises and contracts, dated Jan'y 1, 1918 (Ex. "A")	255	1242 1877
Schedule entitled "In re condemnation 42nd Street Spur — Documentary proof of title" (Ex. "B")	255	1618 1877
Extracts from volume entitled Statutes and Documents affecting the elevated railways in City of New York (Ex. "C")	256	1619 1877
Plan showing route of N. Y. R. R. in 42nd St. between Third Ave. and Grand Central Station, etc.; approved as per resolution, dated Dec. 30, 1879 (Ex. "D")	264	1642 1902

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Resolution of Board of Estimate and Apportionment adopted Oct. 19, 1923, directing removal of columns from street to curb (Ex. "E")	265	1642
Resolution of Board of Estimate and Apportionment adopted Oct. 19, 1923, directing removal of stairway at Park Ave. and 42nd St. (Ex. "F") ...	265	1644
Proposed plan of station at 42nd St. account of removal of 42nd St. branch (Drawing No. 22941), dated Aug. 22, 1923 (Ex. "G")	330	1645 1904 1645
Nineteen (19) Photographs showing structures and abutting properties (Exs. "H-1" to "H-19")	388	1884 1906 1908
Twenty-four (24) Photographs showing structures and abutting properties (Exs. "H-20" to "H-38" and "H-42" to "H-46")	389	1646 1884 1906 1908
Conveyance and Release, Julia E. Ford, *et al.*, to Interborough Rapid Transit Co., N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-1")	446	1646
Conveyance and Release, 42nd St., Manhattanville and St. Nicholas Ave. Railway Co. to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-2")	446	1651
Conveyance and Release, Manhattan Storage and Warehouse Co. to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-3")	446 447	1656
Conveyance and Release, Harriette W. Goelet, *et al.*, to Interborough Rapid Transit Co., N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-4")	446 447	1660
Conveyance, Dorothy L. Laimbeer, etc., to Manhattan Railway Co. and N. Y. El. R. R. Co. (Ex. "J-5")	446 447	1665

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Conveyance and Release, Alethea H. Weeks, *et al.*, to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-6")	446 447	1667
Conveyance and Release, Thos. B. Winthrop and wife to Manhattan Railway Co. (Ex. "J-7")	446 447	1672
Conveyance, J. Frederic Kernochan, etc., to Manhattan Railway Co. (Ex. "J-8")	446 447	1676
Conveyance, Harriet R. McKim to Manhattan Railway Co. (Ex. "J-9")	446 447	1682
Conveyance and Release, Jas. W. Pinchot to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-10")	446 447	1686
Conveyance and Release, Cooper Union for Advancement of Science and Art, *et al.*, to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-11")	446 447	1691
Conveyance and Release, Mary R. Goelet, *et al.*, to Interborough Rapid Transit Co., N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-12")	446 447	1697
Conveyance and Release, Jas. Hernon to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-13")	446 447	1703
Conveyance and Release, Alice M. O'Brien, etc., to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-14")	446 447	1707
Conveyance and Release, Margaret J. Westcott to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-15")	446 447	1712
Conveyance and Release, Geo. Rothmann and wife to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-16")	446 447	1717
Memo. 42nd St. Spur—Franchise Value (Ex. "K" for Ident.; Ex. "K")	527 653	1720
Chart showing total revenue passengers		

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carried by Rapid Transit Railways, N. Y. City, for fiscal years (1880, 1890, 1900 to 1923) ended June 30 (Ex. "K-1")	527	1740 1910
Chart showing total revenue passengers carried by I. R. T. for fiscal years (1880, 1890, 1900 to 1923) ended June 30 (Ex. "K-2")	527	1740 1912
Chart showing ticket sales on 3rd Ave. Elevated Line for fiscal years (1910 to 1923) ended June 30 (Ex. "K-3")	527	1740 1914
Chart showing tickets sold at Rapid Transit Stations, 42nd St., N. Y. City, for fiscal years (1900, 1902, 1904, 1906, 1908, 1910, 1912, 1914, 1916, 1918, 1920 & 1922), ended June 30 (Ex. "K-4")	527	1740 1916
Chart showing total ticket sales for years 1922 (June to Dec.), 1923 (Jany. to Dec.) and 1924 (Jany. to Dec.) (Ex. "K-5")	527	1740 1918
Chart showing tickets sales at 42nd St. Spur, 42nd St. Station, 3rd Avenue Line and combined Spur and 3rd Ave. stations for years 1922, 1923 and 1924 (Jany. to Nov.) (Ex. "K-6")	527	1740 1920
Chart showing ticket sales at 42nd St. Spur, 42nd St. Station 3rd Ave. Line and combined Spur and 3rd Ave. stations for fiscal years (1900 to 1923) ended June 30th (Ex. "K-7")	527	1740 1922
Chart showing per cent. increase in total ticket sales for years ended with months indicated over previous 12 months period (Ex. "K-8")	527	1740 1924
Cost of operating 42nd Street Spur (Ex. "L")	570	1741
Tabulation of Geo. W. Burpee's testimony on value (Ex. "M")	575	1745

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Comparison of estimates, 42nd St. Spur (Ex. "M-1")	575	1748
Statement of ticket sales from 1913 to 1919, 38th St. and 42nd St. at 6th Ave. (Ex. "N")	693	1748 1749
Map showing routes of Interborough Rapid Transit Co. (Ex. "O")	703	1926
Order confirming report of Commissioners *re* Woolsey, *et al.*, in condemnation proceedings to acquire street easements (Ex. "P")	784	1749 1619
Volume entitled Statutes and Documents affecting Elevated Railroads in City of New York (Ex. "Q")	785	1755 1877
Fourteen (14) Photographs showing structure before spur demolition (Exs. "R" and "R-1" to "R-13")	834	1755 1884 1928
Seventeen (17) Photographs of properties after the structure removal (Exs. "S" and "S-1" to "S-16")	834	1756 1884 1930
Deed of easement, Manhattan Railway Co., *et al.*, to The 25 Broadway Corporation of 24 State St.; rec. Apr. 5, 1920, in L. 3146, p. 380 (Ex. "T")	930	1756
Map showing plottage of property as of Dec. 7, 1923 (Ex. "U")	931	1759 1932
Pamphlet of Division of Franchises of Board of Estimate and Apportionment *re* charges for space in street (Ex. "W")	979	1760
Conveyance and Release, Wm. and Margaret Volk to Manhattan Railway Co. (Ex. "X")	993	1765
Conveyance and Release, Rosewin Realty Co. to Manhattan Railway Co. (Ex. "Y")	994	1769
Extracts from minutes of proceedings before Public Service Commission on "Application of Board of Estimate and Apportionment relative to East		

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42nd Street Spur"—Case No. 2582 (Ex. "Y-1")	1036	1775
(Of Claimants' Exhibit Y[1], pages 1775 to 1777, 1784 to 1793 inc. of the record, being the testimony of Forest, of Bernstein, of Doino, of Schaeffer, of O'Connor and of Ryan, are printed at the request of the claimants and pages 1778 to 1783, 1793 to 1869 inc., of the record, being the testimony of McCue, of Brown, of Knox, of Meikleham, of Bernheim, of Bauer and of Schaeffer, are printed at the request of the City.)		
Statement showing detailed items of costs of work under Plan No. 22941 marked Ex. "G" (Ex. "Z")	1037	1870
Page summarizing itemized elements of cost of reconstruction work at 3rd Ave. and 42nd St. (Ex. "BB")	1041	1872
Statement showing passenger traffic by months from July, 1921, to and including June, 1925, at 42nd St. on 3rd Ave. Line, Grand Central Station, 3rd Ave. Line, etc. (Ex. "CC")	1063	1873
Statement showing passenger traffic by months from July, 1921, to and including June, 1925, at 34th St. Station on 3rd Ave. and 2nd Ave. Lines, 47th St. Station on 3rd Ave. Line and 50th St. Station on 2nd Ave. Line (Ex. "DD")	1064	1875
Exhibit of Manhattan Railway Company:		
Sheet of Earnings (Ex. "AA")	1041	1879

Exhibits of the Central Union Trust Company of New York:

Consolidated Mortgage, Manhattan Railway Co. & Metropolitan El. R. R. Co. to Central Union Trust Co., as Trustee, dated Feb. 26, 1890; rec. on Feb. 26, 1890, in L. 2538, p. 157 (Ex. "A") 1066 1881

Supplemental Indenture, Manhattan Railway Co. to Central Union Trust Co., as Trustee, dated June 13, 1899; rec. on July 12, 1899, in L. 7, p. 265 (Ex. "B") 1067 1881

Exhibit of the Equitable Trust Company of New York:

Second Mortgage, Manhattan Railway Co. to Equitable Trust Co. of N. Y., dated June 1, 1913; rec. on Mar. 2, 1916, in L. 26, p. 222, etc. (Ex. "A") 1067 1881

3715

City's Exhibit 69—Stipulation Covering Certain Facts in Case.

New York Supreme Court, County of New York.

[SAME TITLE]

It is hereby stipulated and agreed by and between the parties hereto that Schedules "I" and "II" annexed hereto may be considered in evidence in this proceeding with the same force and effect as if the facts contained in the aforesaid Schedules "I" and "II" were duly proven in the proceeding.

3716

It is further stipulated and agreed by and between the parties hereto that the Queensborough Bridge line as an extension of the Second Avenue Elevated line of the Manhattan Railway Division of the Interborough Rapid Transit Company was opened for operation on July 23, 1917; that on the same day (July 23, 1917) operation on the part of the said Second Avenue elevated line over said Queensborough Extension was further extended and continued over the Astoria line of the subway division of said Interborough Rapid Transit Company; and that on January 17, 1918, the operation of said Second Avenue line of the elevated division was extended also over the so-called Corona line of said subway division of the Interborough Rapid Transit Company; both said Astoria line and Corona line being Rapid Transit lines extending into the Borough of Queens.

3717

It is further stipulated and agreed by and between the parties hereto that the Second Avenue elevated trains operating over said Astoria and Corona lines over the Queensborough Bridge line have continued their operation south of 59th Street on the Second Avenue elevated line and regularly

3718 *City's Exhibits.*

operate through the 42nd Street Station on said Second Avenue line.

Dated, New York, October 26th, 1925.

GEORGE P. NICHOLSON,
Corporation Counsel,
Attorney for The City of New York.

MURRAY, ALDRICH & ROBERTS,
Attorneys for the Manhattan Railway Company.

3719

GEORGE WELWOOD MURRAY,
Attorney for the Equitable Trust Company of New York, Trustee-Mortgagee.

DAVIES, AUERBACH & CORNELL,
Attorneys for the Central Union Trust Company of New York, Trustee-Mortgagee.

JAMES L. QUACKENBUSH,
Attorney for the Interborough Rapid Transit Company.

3720

WM. H. PAGE,
Amicus Curiae.

"SCHEDULE I"

INTERBOROUGH RAPID TRANSIT COMPANY—ELEVATED DIVISION

Ticket Sales or Turnstile Entries Forty-Second St. (Incl. Grand Central) and Contiguous Stations

Calendar Year	Third Avenue Line			Second Avenue Line		
	42nd Street Station	34th Street Station	47th Street Station	42nd Street Station	34th Street Station	50th Street Station
1919	4,557,129	3,370,648	1,377,363	1,742,720	1,504,730	894,887
1920	5,128,800	3,688,471	1,596,249	2,067,160	1,809,045	1,054,985
1921	4,869,940	3,556,800	1,437,133	1,989,000	1,719,036	978,879
1922	4,777,980	3,455,940	1,433,290	2,030,900	1,758,503	985,315
1923	5,413,315	3,843,491	1,614,561	2,321,276	1,935,835	1,085,566
1924	5,140,581	3,847,845	1,606,272	2,592,185	2,056,893	1,133,194
Mons., Jany.-July						
1923	3,050,184	2,182,443	963,320	1,314,352	1,116,491	641,081
1924	2,975,071	2,256,849	929,859	1,486,946	1,188,810	647,572
1925	3,141,490	2,208,978	890,928	1,556,156	1,233,435	678,149

3722

SCHEDULE "II"

INTERBOROUGH RAPID TRANSIT COMPANY—ELEVATED DIVISION

Ticket Sales and Turnstile Readings at 42nd Street 2nd Ave. and 42nd Street 3rd Ave. Plus Spur

Fiscal Year Ending June 30th	3rd Ave. + Spur	2nd Ave.
1900	2,657,230	486,916
1901	2,750,531	478,805
1902	3,167,920	636,625
1903	3,962,737	775,130
1904	4,499,001	928,265
1905	3,667,610	959,800
1906	3,020,154	1,005,579
1907	3,333,911	1,168,998
1908	3,100,659	1,040,656
1909	3,052,738	1,033,821
1910	3,363,655	1,087,993
1911	3,401,790	1,084,099
1912	3,334,098	1,067,341
1913	3,267,180	1,090,210
1914	3,468,458	1,095,999
1915	3,481,006	1,038,989
1916	3,835,632	1,205,429
1917	4,633,726	1,677,204
1918	4,679,840	1,697,072
1919	4,702,478	1,695,732
1920	4,864,567	1,964,200
1921	5,082,780	2,020,760
1922	4,731,800	1,978,040
1923	5,042,266	2,147,324

3723

3724 *Claimants' Exhibits.*

Claimants' Exhibit "A"—Extracts from Vols. I and II entitled: Manhattan Railway Co., Organization; Franchises and Contracts, Dated January 1, 1918.

"West Side and Yonkers Patented Railroad Company.

Laws of 1866, Chapter 697. An Act supplementary to the act entitled 'An act to authorize the formation of railroad corporations, and to regulate the same,' passed April 2d, 1850.

3725 Passed April 20, 1866" (pp 421 to 423 of Claimants' Exhibit "A").

(Here follows Chapter 697, Laws of 1866, which is covered by stipulation printed at p. 1877 of the record.)

"Laws of 1867, Chapter 489. An Act to provide for the construction of an experimental line of railway in the Counties of New York and Westchester.

Passed April 22, 1867" (pp. 428 to 434 of Claimants' Exhibit "A").

3726

(Here follows Chapter 489, Laws of 1867, which is covered by stipulation printed at p. 1877 of the record.)

"Laws of 1868, Chapter 855. An Act supplementary to Chapter 489 of the laws of 1867 and to provide for the collection and application of Revenue in the County of New York, in certain cases.

Passed June 3d, 1868" (pp. 435 to 438 of Claimants' Exhibit "A").

3727

(Here follows Chapter 855, Laws of 1868, which is covered by stipulation printed at p. 1877 of the record.)

"Act of extending time to construct the West Side & Yonkers, etc., Road.

Laws of 1875, Chapter 595. An Act to authorize and require the New York Elevated Railroad Company to continue and complete its railroad in the City of New York, and to regulate the construction, operation and management thereof.

Passed June 17, 1875" (pp. 438a, 438b, 438c and 438d of Claimants' Exhibit "A").

3728

(Here follows Chapter 595, Laws of 1875, which is covered by stipulation printed at p. 1877 of the record.)

Board of Commissioners of Rapid Transit.
City of New York, Mayor's Office, City Hall.
Tuesday, July 6, 1875—2 o'clock P. M.

At a meeting of the Commissioners, held to-day, at the Mayor's Office, at 2 o'clock P. M., there were

Present—All the Commissioners, viz.: Joseph Seligman, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

3729

Present, also—The Mayor.

On motion of Mr. Brown, Mr. Seligman was chosen Chairman of the meeting, and Burton N. Harrison was requested to act as Secretary of the meeting.

The Chairman presented to the meeting a certified copy of the act under which the Commissioners were appointed—being chapter 606 of the Laws of 1875.

3730 The Mayor informed the meeting that it appears by the application of fifty reputable householders and taxpayers of the City and County of New York, verified upon oath before a Justice of the Supreme Court, that there is need in the City and County of New York of a steam railway or railways for the transportation of passengers, mails or freight.

Of the said applications, which were read to the meeting, are the following:

To the Hon. William H. Wickham,

3731 Mayor of the City of New York:

Your petitioners, residents, householders and taxpayers of the City, County and State of New York, beg leave to bring to your attention the following facts:

First.—That at the recent session of the Legislature an act was passed entitled, "An act further to provide for the construction and operation of a steam railway or railways in counties of the State."

Second.—That the first section of the said act
3732 reads as follows:

"Section 1. Whenever it shall appear by the application of fifty reputable householders and taxpayers of any county in this State, verified upon oath before a justice of the Supreme Court, that there is need in such county of a steam railway or railways, for the transportation of passengers, mails or freight, the board of supervisors of said county may, within thirty days after presentation to them of such application, duly verified as aforesaid, appoint five commissioners, who shall be residents of the said county, and who shall have

3733

full power and authority to do and provide all that they are hereinafter directed to do and provide, and a certificate of whose appointment, signed by the chairman and clerk of such board, shall be filed in the office of the Secretary of State, and a duplicate thereof in the office of the clerk of such county; but whenever any such proposed railway shall be wholly within the limits of any city in the State, then such application shall be made only to the mayor of said city, and such mayor shall appoint such commissioners as aforesaid."

3734

Third.—That your petitioners are each of them householders and taxpayers of the City of New York, and as such do severally depose and say, "that there is need in the City and County of New York for a steam railway or railways for the transportation of passengers, mails or freight."

Wherefore, your petitioners respectfully apply to you for the appointment of five Commissioners for the purposes, and with the power and authority, and subject to the duties, that are provided in and by the said act.

3735

All of which is respectfully submitted.

John H. Sherwood, 531 Fifth avenue.
W. H. Morrell, 34 West Twenty-fifth street.
Alvin Burt, 42 East Twentieth street.
Jno. D. Townsend, 353 West 34th street.
L. G. Morris, Morrisania, Twenty-fourth Ward.
Joseph Thompson, No. 256 West Fifty-second street.
E. G. Selchow, 222 East One Hundred and Twenty-sixth street.
Aaron Raymond, 726 Fifth avenue.

3736

F. L. Johnson, No. 30 West Twenty-sixth street.
T. Bailey Myers, 18 West Thirty-ninth street.
Robert Ward, 4 East Eighty-sixth street.
Geo. W. Carleton, 192 Fifth avenue.
Jos. W. Clowes, 597 Fifth avenue.
Geo. H. Bissell, 416 Fifth avenue.
Albert C. Lamson, 115 West Forty-third street.
E. H. Tompkins, 50 West Fifty-first street.
P. Van Valkenburgh, 508 Fifth avenue.
Theo. Roosevelt, 6 West Fifty-seventh street.
Fordham Morris, residing at Fordham Heights,

3737 Twenty-fourth Ward of the City of the New York.
Henry Lewis Morris, 12 West Fifty-third street, City of New York.
H. H. Cammann, 26 East Thirty-third street, N. Y.
John B. Cornell, 530 Fifth avenue, N. Y.
J. H. Cheever, 89 Fifth avenue, N. Y.
Allan Campbell, 125 Lexington avenue.
Noah Davis, 144 West Fifty-sixth street.
C. L. Cammann, Fordham Heights, Twenty-fourth Ward.
Rich'd H. Bowne, 177 Second avenue, N. Y.

3738 Nath'l Jarvis, Jr., 124 West Twenty-third street.
F. W. Loew, 618 Lexington avenue.
Wm. C. Conner, 427 East Fifty-seventh street.
Ber. L. Ackerman, 801 Fifth avenue.
A. C. Fransioli, 2 Nassau street.
S. E. Mauran, Inwood.
Jefferson M. Levy, 108 East Fortieth street.
Chas. A. Potter, 43 West Seventeenth street.
Jno. P. Hauschild, 112 Centre street.
Lawson N. Fuller, One Hundred and fifty-fifth street, Tenth avenue.
Jno. R. Ames, 239 East One Hundred and Tenth street.

3739

Oliver Bryan, Twenty-third Ward.

Geo. S. Lespinasse, One Hundred and Seventy-fifth street, Twelfth avenue.

Will. Man, 56 Wall street.

B. P. Fairchild, 342 West Fifty-seventh street.

J. O. Fowler, 353 Fifth avenue.

J. J. Macklin, 308 East Fifty-seventh street.

John C. Shaw, 670 Lexington avenue.

Michael Noonan, 174 East Seventy-ninth street.

W. B. Whiteman, 220 West Fifteenth street.

Emmet R. Olcott, 211 West Fourteenth street.

3740

Henry P. McGowan, 29 East One Hundred and Twenty-ninth street.

Joseph J. Potter, 584 Lexington avenue.

Horatio P. Allen, Madison avenue, near Eighty-fourth street.

Edward T. Young, 18 East Thirty-third street.

City and County of New York, ss.:

3741

John H. Sherwood, W. H. Morrell, Alvin Burt, John D. Townsend, L. G. Morris, Joseph Thompson, E. G. Selchow, Aaron Raymond, F. L. Johnson, T. Bailey Myers, Robert Ward, George W. Carleton, Joseph W. Clowes, George H. Bissell, Albert C. Lamson, E. H. Tompkins, P. Van Valkenburg, Theodore Roosevelt, Fordham Morris, Henry Lewis Morris, H. H. Cammann, John B. Cornell, J. H. Cheever, Allan Campbell, Noah Davis, C. L. Cammann, Richard H. Bowne, Nathaniel Jarvis, Jr., F. W. Loew, Wm. C. Conner, Ber. L. Ackerman, A. C. Fransioli, S. E. Mauran, Jefferson M. Levy, Chas. A. Potter, John P. Hauschild, Lawson N. Fuller, Jno. R. Ames, Oliver Bryan, Geo. S. Lespinasse, Will. Man, B. P. Fairchild, Edward T. Young, John C. Shaw, Michael Noonan, W. B. Whiteman, Emmet R. Olcott, Henry

3742 *Claimants' Exhibits.*

P. McGowan, Joseph J. Potter, Horatio P. Allen, J. O. Fowler, and J. J. Macklin, being duly sworn, doth each for himself depose and say, that he has read the foregoing petition, and that the same is in all respects true.

	John H. Sherwood,	Richard H. Bowne,
	W. H. Morrell,	Nathaniel Jarvis, Jr.
	Alvin Burt,	F. W. Loew,
	Jno. D. Townsend,	William C. Conner,
	L. G. Morris,	Ber. L. Ackerman,
	Joseph Thompson,	A. C. Fransioli,
3743	E. G. Selchow,	S. E. Mauran,
	Aaron Raymond,	Jefferson M. Levy,
	F. L. Johnson,	Charles A. Potter,
	T. Bailey Myers,	John P. Hauschild,
	Robert Ward,	Lawson N. Fuller,
	George W. Carleton,	John R. Ames,
	Jos. W. Clowes,	Oliver Bryan,
	Geo. H. Bissell,	George S. Lespinasse,
	Albert C. Lamson,	Will. Man,
	E. H. Tompkins,	B. P. Fairchild,
	P. Van Valkenburg,	J. J. Macklin,
	Theo. Roosevelt,	Edward T. Young,
	Fordham Morris,	John C. Shaw,
	Henry Lewis Morris,	Michael Noonan,
	H. H. Cammann,	W. B. Whiteman,
3744	John B. Cornell,	Emmet R. Olcott,
	J. H. Cheever,	Henry P. McGown,
	Allan Campbell,	Jos. J. Potter,
	Noah Davis,	Horatio P. Allen,
	C. L. Cammann,	J. O. Fowler.

Sworn to before me, this 18th day June, 1875, Chas. Donohue, Justice of the Supreme Court.

To the Mayor of the City of New York:

The undersigned applicants respectfully represent, state and show, that they are and each of them is a reputable householder and tax payer, residing in the City of New York.

That the undersigned make application to your Honor, as Mayor of the said City of New York, under and in pursuance of Chapter 606 of the Laws of 1875, entitled: "An act further to provide for the construction and operation of a Steam Railway or Railways in Counties of the State."

And we, and each of us, do represent and assert to your Honor that there is need in said City and County of New York of a steam railway (entirely within said city) for the transportation of passengers, mails and freight.

3746 And your applicants further show, state and represent, that there is need of a steam railway or railways within said city, connecting the elevated steam railroad, known as the "New York Elevated Railroad" (which elevated railroad is now in actual operation), from some point or points thereon, or upon the projected line or route thereof, between its southerly terminus, near the Battery, and Fifty-ninth street, with the depot of the New York Central and Hudson River Railroad Company upon Fourth avenue, at or near Forty-second street, through, across and over such streets, avenues and places as the Commissioners to be appointed in pursuance of this application may fix 3747 and determine.

And your applicants further show, state and represent that there is need of a steam railway or railways within said city, connecting the said New York Elevated Railroad, from some point or points upon the line thereof, with the ferries on the East river, known as South Ferry, Hamilton Avenue Ferry and Staten Island Ferry, through, across and over such streets, avenues and places as the Commissioners to be appointed in pursuance of this application may fix and determine.

3748 And your applicants further show, state and represent that there is need of a steam railway or railways within said city, connecting the said New York Elevated Railroad, from some point or points upon the line thereof, with the New York Central and Hudson River Railroad, or the depot or depots thereof, on the westerly side of the said City of New York, at such point or points as they may fix and determine, between Twenty-ninth street and Spuyten Duyvil Creek, through, across and over such streets, avenues and places as the Com-
3749 missioners to be appointed in pursuance of this application may fix and determine.

And your applicants further show, state and represent that there is need of a steam railway or railways within said city, connecting the said New York Elevated Railroad with other steam railways, depots and steam ferries, from such points thereon and through, across and over such streets, avenues and places, and to such ferries, depots and railways as the said commissioners, appointed under and in pursuance of said act, may fix, determine and locate.

3750 And the undersigned applicants pray the appointment of commissioners, under and by virtue of section one of said act, to determine upon the necessity of such steam railway or railways, and to fix and determine the route or routes for such steam railway or railways, and to locate the same, and also to fix and determine the route or routes by which said elevated steam railroad or railroads may connect with the railway of the New York Central and Hudson River Railroad Company, and with the depot or depots thereof, and with South Ferry, Hamilton Avenue Ferry and Staten Island Ferry, and the other ferries hereinbefore specified.

3751

And that such commissioners fix and determine the route or routes of such other railway or railways, and connections with such other railways, depots or steam ferries, as, in the judgment of such commissioners, may be necessary and proper.

And your petitioners and applicants will ever pray, etc.

John Ross, 28 West Twenty-third street.
S. A. Main, 23 West Twenty-third street.
Eugene Jones, 21 West Twenty-third street.
A. A. Selover, St. James Hotel.
John A. Foley, 212 East Tenth street.

3752

William F. Shirley, 53 West Thirty-seventh street.
I. H. Reed, 5 State street.
Charles V. T. Foley, 212 East Tenth street.
John L. Melcher, 30 West Twenty-first street.
Charles W. Griswold, Fifth Avenue Hotel.
Guy R. Pelton, 4 West Twenty-ninth street.
Dwight H. Olmstead, 4 West Twenty-seventh street.
A. B. Darling, 40 West Twenty-third street.
James Speyers, 415 West Twenty-third street.
J. M. Noyes, 7 Park avenue.

3753

William M. Bliss, 29 West Twenty-fourth street.
S. Bing, Jr., 205 East Sixty-first street.
Adolphe Dessar, 234 East Sixty-first street.
M. Freligh, 31 West Twenty-fourth street.
Louis Kammerer, 234 East Sixty-second street.
Benjamin A. Willis, Windsor Hotel.
Frederick Mohr, 240 East Sixty-second street.
W. E. Hartwig, 232 East Sixty-second street.
John H. V. Arnold, No. 28 East Sixty-ninth street.
Jacob Sharp, 320 West Twenty-third street.
John Foley, 20 East Seventy-third street.

3754 *Claimants' Exhibits.*

Robert Halsey, 58 West Thirty-eighth street.
Allan Campbell, 125 Lexington avenue.
John Webb, Fifth Avenue Hotel.
Jas. G. Mills, St. James Hotel.
Samuel C. Mott, 29 Dominick street.
Dexter A. Hawkins, 5 West Thirty-fourth street.
N. A. Cowdrey, 46 East Twenty-ninth street.
L. W. Winchester, 65 Broadway.
F. Lombardo, No. 7 East Thirty-first street.
A. C. Bell, 219 East Seventeenth street.
John Franz, 112 West Twenty-third street.
3755 F. J. Fithian, 130 West Twenty-third street.
Philip G. Weaver, 36 West Thirty-ninth street.
John S. Gilmore, 304 West Thirtieth street.
James L. Hastie, 345 West Twenty-ninth street.
Wm. Ahrens, 335 Seventh avenue.
R. N. Hazard, 32 West Thirty-eighth street.
David Dows.
John D. Mairs.
E. R Livermore.
George W. Smith.
Leonard Hazeltine.
Munroe Crane.
Horatio Reed.
3756 Harvey Kennedy.
William L. Kennedy.
Theodore I. Husted.
Oliver Stahlnecker.
Carlos Cobb.
James L. Jarvis.

State, County and City of New York, ss.:

John Ross, S. A. Main, Eugene Jones, A. A. Selover, John A. Foley, William F. Shirley, I. H. Reed, Charles V. T. Foley, John L. Melcher, Charles W. Griswold, Guy R. Pelton, Dwight H.

3757

Olmstead, A. B. Darling, James Speyers, J. M. Noyes, William M. Bliss, S. Bing, jr., Adolphe Dessar, Martin Freligh, Louis Kammerer, Benjamin A. Willis, Frederick Mohr, John H. V. Arnold, W. E. Hartwig, Jacob Sharp, Robert Halsey, John Foley, Allan Campbell, John Webb, James G. Mills, Samuel C. Mott, Dexter A. Hawkins, N. A. Cowdrey, L. W. Winchester, F. Lombardo, A. C. Bell, John Franz, F. J. Fithian, Philip G. Weaver, John S. Gilmore, James L. Hastie, William Ahrens, R. N. Hazard, Harvey Kennedy and Wiliiam L. Kennedy, being each severally sworn,

3758

do each for himself depose and say: That he has heard the foregoing application, subscribed by deponents, read, and knows the contents thereof, and that the allegations and statements contained in such application are and each one of such statements and allegations is true.

John Ross,
Eugene Jones,
S. A. Main,
A. A. Selover,
John A. Foley,
Wm. F. Shirley,

3759

I. H. Reed,
Chas. V. T. Foley,
John L. Melcher,
Charles W. Griswold,
Guy R. Pelton,

Dwight H. Olmstead, 4 West Twenty-seventh street.

A. B. Darling, 40 West Twenty-third street.

James Speyers, 415 West Twenty-third street.

J. M. Noyes, 7 Park avenue.

Adolphe Dessar, 234 East Sixty-first street.

S. Bing, Jr., 205 East Sixty-first street.

Wm. M. Bliss, 29 West Twenty-fourth street.
M. Freligh, 31 West Twenty-fourth street.
Louis Kammerer, 234 East Sixty-second street.
Benjamin A. Willis, Windsor Hotel.
Frederick Mohr, 240 East Sixty-second street.
John H. V. Arnold, 28 East Sixty-ninth street.
W. E. Hartwig, 232 East Sixty-second street.
Jacob Sharp, 320 West Twenty-third street.
Robert Halsey, 8 West Thirty-eighth street.
John Foley, 20 East Seventy-third street.
Allan Campbell, 125 Lexington avenue.

3761 John Webb, Fifth Avenue Hotel.
Jos. P. Mills, St. James Hotel.
Sam'l C. Mott, 29 Dominick street.
Dexter A. Hawkins, 5 West Thirty-fourth street.
N. A. Cowdrey, 46 East Twenty-ninth street.
L. W. Winchester, 65 Broadway.
F. Lombardo, 7 East Thirty-first street.
A. C. Bell, 219 East Seventeenth street.
John Franz, 112 West Twenty-third street.
F. J. Fithian, 130 West Twenty-third street.
Philip G. Weaver, 36 West Thirty-ninth street.
John S. Gilmore, 304 West Thirtieth street.
James L. Hastie, 345 West Thirty-ninth street.

3762 Wm. Ahrens, 335 Seventh avenue.
R. N. Hazard, 32 West Thirty-eighth street.
Harvey Kennedy.
William L. Kennedy.

Sworn to before me this 18th day of June, 1875, Chas. Donohue, Justice Supreme Court.

State, County and City of New York, ss.:

David Dows, John D. Mairs, Edwin R. Livermore, George W. Smith, Leonard Hazeltine, Munroe Crane, Horatio Reed, Cartlos Cobb, James L. Jarvis, Theodore I. Husted, and Oliver Stahl

necker, being each severally sworn, do each for himself depose and say that he has heard the foregoing application subscribed by deponents read and knows the contents thereof, and that the allegations and statements contained in such application are and each one of such statements and allegations is true.

David Dows, John D. Mairs, E. R. Livermore, Geo. W. Smith, Leonard Hazeltine, Monroe Crane, Horatio Reed, Carlos Cobb, James L. Jarvis, Theodore I. Husted, Oliver Stahlnecker.

3764

Sworn to before me this 18th day of June, 1875. John R. Brady, J. S. C.

The Secretary informed the meeting that the Mayor's certificate of appointment of the Commissioners had been filed in the office of the Secretary of State, and a duplicate thereof in the office of the Clerk of the City and County of New York. The said certificate, a copy of which was read to the meeting, is as follows:

It appearing by the application, made to me on the 19th day of June, 1875, by fifty reputable householders and taxpayers of the City and County of New York, in the State of New York, verified upon oath before a Justice of the Supreme Court, that there is need in said city and county of a steam railway or railways for the transportation of passengers, mails and freight, and thirty days not having expired since said application, now, in pursuance of the provisions of the act entitled, "An act further to provide for the construction and operation of a steam railway or railways in counties of the State," passed June 18, 1875, three-fifths being present, I, William H. Wickham,

3765

3766 Mayor of the City of New York, do hereby appoint the following five persons, residents of said city and county, to be Commissioners under and in pursuance of the provisions of said act, namely:

Joseph Seligman, No. 26 West Thirty-fourth street,

Lewis B. Brown, No. 257 West Forty-fifth street,

Cornelius H. Delamater, No. 424 West Twentieth street,

Jordan L. Mott, Third avenue, near East One Hundred and thirty-third street; and

3767 Charles J. Canda, No. 208 West Fourteenth street.

In witness whereof I have hereunto signed my name, the first day of July, 1875. W. H. Wickham, Mayor. (Seal of office.)

The Secretary informed the meeting, further, that each of the Commissioners had taken and subscribed an oath faithfully to perform the duties of his office; that the said oaths of Messrs. Seligman, Brown, Mott and Canda had been filed in the office of the Secretary of State, and a duplicate

3768 thereof in the office of the Clerk of the City and County of New York; that the said oath of Mr. Delamater had been mailed to the Secretary of State to be filed in his office, and that the duplicate thereof had been filed in the office of the Clerk of the City and County of New York. The said oaths, a copy of each of which was read to the meeting, are as follows:

I, Joseph Seligman, do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of

the office of a Commissioner under the provisions of chapter 606 of the Laws of 1875, appointed by the Mayor of the City of New York, according to the best of my ability.

Joseph Seligman.

Subscribed and sworn before me this 2d day of July, 1875, W. H. Wickham, Mayor.

I, Lewis B. Brown, do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of 3770
the office of a Commissioner under the provisions of chapter 606 of the Laws of 1875, appointed by the Mayor of the City of New York, according to the best of my ability.

Lewis B. Brown.

Subscribed and sworn before me this 2d day of July, 1875, W. H. Wickham, Mayor.

I, Jordan L. Mott, do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of 3771
a Commissioner under the provisions of chapter 606 of the Laws of 1875, appointed by the Mayor of the City of New York, according to the best of my ability.

Jordan L. Mott.

Subscribed and sworn before me, this 2d day of July, 1875, W. H. Wickham, Mayor.

I, Charles J. Canda, do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of

the office of a Commissioner under the provisions of chapter 606 of the Laws of 1875, appointed by the Mayor of the City of New York, according to the best of my ability.

C. J. Canda.

Subscribed and sworn before me, this 2d day of July, 1875, W. H. Wickham, Mayor.

I, Cornelius H. Delamater, do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of New
3773 York, and that I will faithfully discharge the duties of the office of a Commissioner under the provisions of chapter 606 of the Laws of 1875, appointed by the Mayor of the City of New York, according to the best of my ability.

Cornelius H. Delamater.

Subscribed and sworn before me, this 6th day of July, 1875, W. H. Wickham, Mayor.

The Secretary further informed the meeting that each of the Commissioners had given a bond to the People of the State of New York, in the penal
3774 sum of twenty-five thousand dollars, conditioned for the faithful performance of the duties required by the act under which they were appointed, each of said bonds having two sureties; that each of said bonds and the sureties therein named had been approved by a Justice of the Department of the Supreme Court including the City and County of New York, and that said bonds had been filed in the office of the Clerk of the City and County of New York. The said bonds, a copy of each of which was read to the meeting, are as follows:

3775

Know all men by these presents:

That we, Lewis B. Brown, Howard Potter and William H. Lee, are held and firmly bound unto the People of the State of New York in the penal sum of twenty-five thousand dollars, lawful money of the United States of America, to be paid unto the said the People of the State of New York, for which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

3776

Sealed with our seals, and dated this 6th day of July, in the year of our Lord 1875.

Whereas, the above bounden Lewis B. Brown hath been duly appointed to the office of a Commissioner under the provisions of chapter 606 of the Laws of 1875:

Now, the condition of this obligation is such, that if the above bounden Lewis B. Brown shall in all things well, truly and faithfully perform the duties that may be legally required of him to perform and do, during his continuance in the said office of a Commissioner under the provisions of chapter 606 of the Laws of 1875, then this obligation to be void; otherwise to remain in full force and virtue.

3777

Lewis B. Brown. [L. S.]
Howard Potter. [L. S.]
Wm. H. Lee. [L. S.]

Sealed and delivered in presence of Wm. Reynolds Brown.

State of New York, City and County of New York, ss.:

On the 6th day of July, 1875, before me, a Notary

3778 Public for Westchester and New York Counties, personally appeared the above-named Lewis B. Brown, Howard Potter and William H. Lee, known to me to be the same persons described in and who have executed the above bond, and acknowledged that they executed the same.

Wm. R. Brown, Notary Public.

State of New York, City and County of New York, ss.:

3779 Howard Potter, one of the obligors in the within bond named, being duly sworn, doth depose and say, that he is a resident of the City of New York, and that he is worth the sum of fifty thousand dollars, over and above all his just debts and liabilities.

Howard Potter.

Sworn this 6th day of July, 1875, before me, William Reynolds Brown, Notary Public for Westchester County and New York.

State of New York, City and County of New York, ss.:

3780 William H. Lee, one of the obligors in the within bond named, being duly sworn, doth depose and says that he is a resident of the City of New York, and that he is worth the sum of fifty thousand dollars, over and above all his just debts and liabilities.

William H. Lee.

William Reynolds Brown, Notary Public for Westchester County and New York.

Approved—Geo. C. Barrett, J. S. C.
July 6, 1875.
Filed July 6, 1875.

Know all men by these presents:

That we, Joseph Seligman, James Seligman and Jesse Seligman, are held and firmly bound unto the People of the State of New York, in the penal sum of twenty-five thousand dollars, lawful money of the United States of America, to be paid unto the said the People of the State of New York, for which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed with our seals, and dated this sixth day of July, in the year of our Lord 1875. 3782

Whereas, the above bounden Joseph Seligman hath been duly appointed to the office of a Commissioner under the provisions of chapter 606 of the Laws of 1875:

Now, the condition of this obligation is such that if the above bounden Joseph Seligman shall in all things well, truly and faithfully perform the duties that may be legally required of him to perform and do, during his continuance in the said office of a Commissioner under the provisions of chapter 606 of the Laws of 1875, then this obligation to be void; otherwise to remain in full force and virtue. 3783

Jos. Seligman. [L. S.]
Jas. Seligman. [L. S.]
Jesse Seligman. [L. S.]

Sealed and delivered in the presence of Emile Carlebach, for all signatures.

State of New York, City and County of New York, ss.:

On this 6th day of July, 1875, before me, a Notary Public, personally appeared the above

named, Joseph Seligman, James Seligman and Jesse Seligman, known to me to be the same persons described in and who have executed the above bond, and acknowledged that they executed the same.

Theo. M. Lilienthal, N. P.

State of New York, City and County of New York, ss.:

James Seligman (No. 20 West Thirty-fourth Street), in the within bond named, being duly
3785 sworn, doth depose and say that he is a resident of the City of New York, and that he is worth the sum of $50,000 over and above all his just debts and liabilities.

Jas. Seligman.

Sworn this 6th day of July, 1875, before me, Theo. M. Lilienthal, Notary Public.

State of New York, City and County of New York, ss.:

Jesse Seligman (No. 2 East Forty-sixth Street), in the within bond named, being duly sworn, doth
3786 depose and say that he is a resident of the City of New York, and that he is worth the sum of $50,000 over and above all his just debts and liabilities.

Jesse Seligman.

Sworn this 6th day of July, 1875, before me, Theo. M. Lilienthal, Notary Public.

Approved—Geo. C. Barrett, J. S. C.
July 6, 1875.
Filed July 6, 1875.

Know all men by these presents:

That we, Charles J. Canda, William B. Ogden and John H. Abeel, are held and firmly bound unto the People of the State of New York, in the penal sum of twenty-five thousand dollars, lawful money of the United States of America, to be paid unto the said the People of the State of New York, for which payment well and truly to be made and done, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed with our seals, and dated this second day of July, in the year of our Lord one thousand eight hundred and seventy-five. 3788

Whereas, the above bounden Charles J. Canda hath been duly appointed to the office of a Commissioner under the provisions of chapter 606 of the Laws of 1875:

Now, the condition of this obligation is such that, if the above bounden Charles J. Canda, shall in all things well, truly and faithfully perform the duties that may be legally required of him to perform and do, during his continuance in the said office of a Commissioner under the provisions of chapter 606 of the Law of 1975, then this obligation to be void; otherwise to remain in full force and virtue. 3789

Chas. J. Canda. [L. S.]
W. B. Ogden. [L. S.]
John H. Abeel. [L. S.]

Sealed and delivered in presence of F. M. Blossom.

3790

Elmira, State of New York, Chemung County, ss.:

On the 3d July, 1875, before me, a Notary Public, personally appeared the above named William B. Ogden, known to me to be the same person described, in, and who executed the above bond, and acknowledged that he executed the same.

F. M. Blossom, Notary Public.

State of New York, City and County of New York, ss.:

3791

On the 6th day of July, 1875, before me, a Notary Public, appeared the within mentioned John H. Abeel and Charles J. Canda, known to me to be the same persons described in, and who have executed the within bond, and acknowledged that they executed the same.

Thos. Ellis, Notary Public.

State of New York, Elmira, Chemung Co., N. Y., ss.:

3792

William B. Ogden, in the within bond named, being duly sworn, doth depose and say: That he is a resident of the City of New York, and that he is worth the sum of fifty thousand dollars, over and above all his just debts and liabilities.

W. B. Ogden.

Sworn this 3d day of July, 1875, before me, F. M. Blossom, Notary Public, in and for Chemung Co.

State of New York, City and County of New York, ss.:

John H. Abeel, in the within bond named, being duly sworn, doth depose and say: That he is a resident of the City of New York, and that he is

3793

worth the sum of fifty thousand dollars, over and above all his debts and liabilities.

John H. Abeel.

Sworn this 6th day of July, 1875, before me, Thos. Ellis, Notary Public.

Approved—Geo. C. Barrett, J. S. C. July 6, 1875. Filed July 6, 1875.

Know all men by these presents:

3794

That we, Jordan L. Mott, Samuel B. White and Oliver Bryan, are held and firmly bound unto the People of the State of New York, in the penal sum of twenty-five thousand dollars, lawful money of the United States of America, to be paid unto the said the People of the State of New York, for which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated this 6th day of July in the year of our Lord 1875.

Whereas, the above bounden Jordan L. Mott hath been duly appointed to the office of a Commissioner under the provisions of chapter 606 of the Laws of 1875:

3795

Now, the condition of this obligation is such, that if the above bounden Jordan L. Mott shall in all things well, truly and faithfully perform the duties that may be legally required of him to perform and do, during his continuance in the said office of a commissioner under the provisions of chapter

3796 606 of the Laws of 1875, then this obligation to be void; otherwise to remain in full force and virtue.

Jordan L. Mott. [L. S.]
Sam'l B. White. [L. S.]
Oliver Bryan. [L. S.]

Sealed and delivered in presence of B. E. Watson.

State of New York, City and County of New York, ss.:

3797 On the 6th day of July, 1875, before me, B. E. Watson, personally appeared the above named Jordan L. Mott, Samuel B. White and Oliver Bryan, known to me to be the same persons described in and who have executed the above bond, and acknowledged that they executed the same.

B. E. Watson, Notary Public.

State of New York, City and County of New York, ss.:

Samuel B. White, in the within bond named, being duly sworn, doth depose and say: That he is
3798 a resident of the City of New York, and that he is worth the sum of $50,000 over and above all his just debts and liabilities.

Samuel B. White.

Sworn this 6th day of July, 1875, before me, B. E. Watson, Notary Public.

State of New York, City and County of New York, ss.:

Oliver Bryan, in the within bond named, being duly sworn, doth depose and say: That he is a resident of the City of New York, and that he is worth

3799

the sum of $50,000, over and above all his just debts and liabilities.

Oliver Bryan.

Sworn this 6th day July, 1875, before me, B. E. Watson, Notary Public.

Approved—Geo. C. Barrett, J. S. C. July 6, 1875. Filed, July 6, 1875.

Know all men by these presents:

3800

That we, Cornelius H. Delamater, Daniel H. Baldwin and John Baird, are held and firmly bound unto the People of the State of New York, in the penal sum of twenty-five thousand dollars, lawful money of the United States of America, to be paid unto the said the People of the State of New York, for which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed with our seals, and dated this sixth day of July, in the year of our Lord one thousand eight hundred and seventy-five.

3801

Whereas, the above bounden Cornelius H. Delamater hath been duly appointed to the office of a Commissioner under the provisions of chapter 606 of the Laws of 1875:

Now, the condition of this obligation is such, that if the above bounden Cornelius H. Delamater shall in all things well, truly and faithfully perform the duties that may be legally required of him to perform and do, during his continuance in the said office of a Commissioner under the provisions of chapter 606 of the Laws of 1875, then

3802 this obligation to be void; otherwise to remain in full force and virtue.

Corns. H. Delamater. (L. S.)
Danl. H. Baldwin. (L. S.)
John Baird. (L. S.)

Sealed and delivered in presence of Herman Schroeter, Notary Public, Co. of N. Y.

State of New York, City and County of New York, ss.:

3803 On the sixth day of July, 1875, before me, Herman Schroeter, Notary Public, personally appeared the above named Cornelius H. Delamater, Daniel H. Baldwin and John Baird, known to me to be the same persons described in and who have executed the above bond, and acknowledged that they executed the same.

Herman Schroeter, Notary Public, Co. of N. Y.

State of New York, City and County of New York, ss.:

3804 Daniel H. Baldwin, No. 22 West Twenty-second street, in the within bond named, being duly sworn, doth depose and say, that he is a resident of the City of New York, and that he is worth the sum of fifty thousand dollars, over and above all his just debts and liabilities.

D. H. Baldwin.

Sworn this sixth day of July, 1875, before me, Herman Schroeter, Notary Public, Co. of N. Y.

State of New York, City and County of New York, ss.:

John Baird, No. 324 Lexington avenue, in the within bond named, being duly sworn, doth depose

and say: that he is a resident of the City of New York, and that he is worth the sum of fifty thousand dollars, over and above all his just debts and liabilities.

John Baird.

Sworn this sixth day of July, 1875, before me, Herman Schroeter, Notary Public, Co. of N. Y.

Approved—Geo. C. Barrett, J. S. C. July 6, 1875. Filed July 6, 1875.

Upon motion of Mr. Mott, it was 3806

Resolved, That formal organization of the Board be deferred until it shall be known that the oath of office, taken and subscribed by Mr. Delamater, has been actually received at and filed in the office of the Secretary of State; and that when this meeting adjourns it adjourn to the 8th inst., at 12 o'clock M., at the Mayor's Office.

Upon motion of Mr. Mott, it was

Resolved, That a Committee of two be appointed by the Chair to draft a form of public notice, inviting the submission of plans for constructing and operating Rapid Transit Railways. 3807

Messrs. Mott and Canda were appointed as such Committee.

Upon motion of Mr. Canda, it was

Resolved, That a Committee of one be appointed to select a convenient office for the Board.

Mr. Canda was appointed as such Committee.

Upon motion of Mr. Brown, the Secretary was directed to have the law under which the Commissioners were appointed printed in pamphlet form, from the certified copy furnished by the Secretary of State.

3808

Upon motion of Mr. Mott, the meeting adjourned.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Mayor's Office, City Hall.

Thursday, July 8, 1875—12 o'clock M.

At a meeting of the Commissioners, held to-day at the Mayor's Office, at 12 o'clcok M., there were

Present—All the Commissioners, viz.: Joseph Seligman, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

3809

Upon motion of Mr. Brown, it was

Resolved, That the Commissioners appointed by the Mayor of the City of New York, under and pursuant to the provisions of chapter 606 of the Laws of 1875, do now organize themselves as a Board, with Joseph Seligman as President.

Upon motion of Mr. Canda, Burton N. Harrison was requested to act as Secretary.

Upon motion of Mr. Canda, it was

3810

Resolved, That the Mayor of the City of New York be and hereby is respectfully invited to attend this and all other meetings of the Board.

In compliance with the invitation, the Mayor appeared and attended the meeting.

The Secretary produced to the Board certificates of the Secretary of State, which were read, and are as follows:

State of New York, Office of the Secretary of State, Albany, July 2, 1875.

It is hereby certified that the certificate made

July 1, 1875, by William H. Wickham, Mayor of the City of New York, appointing Joseph Seligman, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott and Charles J. Canda, as Commissioners under chapter 606, Laws of 1875, was this day received and filed in this office.

Diedrich Willers, Jr., Secretary of State.
(Seal.)

State of New York, Office of the Secretary of State, Albany, July 7, 1875.

3812

It is hereby certified that the oaths of office of Jordan L. Mott, Lewis B. Brown, Charles J. Canda and Joseph Seligman, as Commissioners under chapter 606, Laws of 1875, taken and subscribed before the Mayor of the City of New York, July 2, 1875, were received and filed in this office on the 3d day of July, 1875; and that the oath of office of Cornelius H. Delamater, as a Commissioner under said act, taken and subscribed before the Mayor of the City of New York, July 6, 1875, was received and filed in this office July 7, 1875.

Diedrich Willers, Jr., Secretary of State. 3813
(Seal.)

The Secretary also produced to the Board the certificate of the Clerk of the City and County of New York, which was read, and is as follows:

State of New York, City and County of New York, ss.:

I, William Walsh, Clerk of the City and County of New York, and also Clerk of the Supreme Court for said City and County, being a Court of Record, do hereby certify that the duplicate of the certificate made July 1, 1875, by William H. Wick-

3814 ham, Mayor of the City of New York, appointing Joseph Seligman, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott and Charles J. Canda, as Commissioners under chapter 606, Laws of 1875, was received and filed in this office on the second day of July, 1875; that the duplicates of the oaths of office of said Joseph Seligman, Lewis B. Brown, Jordan L. Mott and Charles J. Canda, as such Commissioners, taken and subscribed before the said Mayor July 2, 1875, were received and filed in this office, on the second day of July, 1875; that
3815 the duplicate of the oath of office of said Cornelius H. Delamater, as such Commissioner, taken and subscribed before the said Mayor July 6, 1875, was received and filed in this office on the 6th day of July, 1875; and that the bond of said Joseph Seligman, and also the bond of said Lewis B. Brown, and also the bond of said Jordan L. Mott, and also the bond of said Charles J. Canda, and also the bond of said Cornelius H. Delamater, approved by a Justice of the Department of the Supreme Court including such County, was received and filed in this office on the 6th day of July, 1875—all according to law.
3816

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court and County, the 7th day of July, 1875.

Wm. Walsh, Clerk.
(Seal.)

The Secretary informed the Board that 250 copies of chapter 606, Laws of 1875, had been printed for the use of the Commissioners, and, upon motion of Mr. Mott, was ordered to cause 250 copies more to be printed.

Mr. Canda stated that a room had been offered

for the use of the Board by the Superior Court of the City of New York, and another by the Court of Common Pleas for the City and County of New York; and, upon his motion, it was Resolved to accept the offer last named, and to occupy Part II, Court of Common Pleas, in the New Court-house, as the permanent office of the Board.

Mr. Mott called the attention of the Board to notices which, after consultation with Mr. Canda and other Commissioners, he had caused to be published in the daily papers of the 7th inst., inviting submission to the Board of plans and suggestions of routes and methods of constructing and operating Rapid Transit Railways. 3818

Upon motion of Mr. Brown, it was

Resolved, That these Commissioners hereby determine that there is a necessity, in the City and County of New York, of a steam railway or railways for the transportation of passengers, mails or freight.

Upon motion of Mr. Brown, it was

Resolved, That when the Board adjourns, it adjourn to 12 o'clock M., on the 13th inst., to consider such plans and suggestions as may then have reached the Board. 3819

Upon motion of Mr. Canda, it was

Resolved, That the Secretary be and hereby is directed to employ a clerk, to be in constant attendance at the office of the Board.

The Secretary was directed to acknowledge the communication of the President of the New York Elevated Railroad Company, inviting the Mayor

3820 and the Commissioners to inspect the Company's road, in a special train, and to state that, after consultation with the Mayor, the Board will indicate a time when it will be convenient to accept the invitation.

Upon motion of Mr. Brown, the Board adjourned.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

3821 City of New York, Office of the Board, New Court-house.

Tuesday, July 13, 1875—12 o'clock M.

The Board met, pursuant to adjournment.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Canda, the reading of the minutes was dispensed with.

3822 The Secretary reported that, pursuant to directions of the Board, he has employed

John E. Morton, as a clerk, at $12.00 per week, payable only when the Board shall have collected an assessment upon subscribers to such company as may be organized under the law, and in that event only,—which arrangement was, upon motion of Mr. Mott, ratified.

Upon motion of Mr. Brown, it was

Resolved, That public notice be given through the newspapers, by an official advertisement and otherwise, that, for the purpose of expediting per-

formance of the business of the Board, it is requested that all plans, suggestions and other communications, intended to be made to the Board, with reference to route or method of constructing or operating a Rapid Transit Railway, be made in writing, on or before August 1, 1875, addressed to the Commissioners at the office of the Board, Part II, Court of Common Pleas, new Court-house.

The President laid before the Board a number of communications already received, and which were opened, examined, numbered from 1 to 37 inclusive, and placed upon file for further consideration. 3824

Upon motion of Mr. Canda, it was

Resolved, That for the present, the Board will meet at twelve o'clock M. every week-day except Saturday.

The Secretary was directed to procure a proper supply of such stationery as may be necessary.

Upon motion of Mr. Delamater, Mr. Hannahs, a resident of Chicago, temporarily here and anxious to return home, was admitted to the meeting and explained a model and plans of an elevated railroad proposed by him. 3825

Upon motion of Mr. Brown, adjourned to 12 o'clock M., July 14.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Wednesday, July 14, 1875—12 o'clock M.

3826

The Board met, pursuant to adjournment.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Canda, the reading of the minutes was dispensed with.

The President laid before the Board further communications, from various persons, which were numbered from 38 to 47 inclusive, and filed for further consideration.

3827

Upon motion of Mr. Delamater, it was

Resolved, That, upon a day to be hereafter designated, the Commissioners will visit other localities in the city, to inspect several models of Rapid Transit Railways, which are offered for inspection, but cannot easily be brought to the office of the Board.

Mr. Brown reported that he has carefully read the communications numbered 2, 4, 6, 7, 8, 11, 12, 13, 15, 17, 18, 20, 22 and 33, and stated their contents in brief.

3828

There were read and considered the communications numbered 37, 5, 9, 14, 16, 45, 24, 27, 31, 26, 28, 21, 23, 32, 34, 19, 3, 40, 46, 41, 39, 43, 42, 35, 38, 47 and 44.

The Secretary was directed to communicate with the writers of communications numbered 9 and 31, and to request further explanations in writing of suggestions by them made.

Upon motion of Mr. Mott, adjourned to 12 o'clock M., July 15.

Burton N. Harrison, Acting as Secretary.

3829

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Thursday, July 15, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—The President, Lewis B. Brown, Cornelius H. Delamater, and Charles J. Canda.

Upon motion of Mr. Canda, the reading of the minutes was dispensed with.

3830

The President submitted to the Board several additional communications in writing from persons offering plans, etc.; they were read, numbered from 48 to 51 inclusive, and were placed on file for further consideration.

Communications heretofore numbered 26, 32, 3, 21, 28, 40, 34, 47 and 23, were further considered.

The Secretary was directed to request the writer of communication numbered 49 to forward plans, etc., referred to by him.

3831

Upon motion of Mr. Delamater, adjourned to July 16, at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Friday, July 16, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The Presi-

dent, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

The printed minutes of the meeting of the Commissioners held July 6, 1875, and of the meetings of the Board held July 8th, 13th, 14th and 15th, 1875, respectively, were read, and, upon motion of Mr. Canda, were approved.

Upon motion of Mr. Brown, it was

Resolved, That the Secretary be and hereby is ordered to print 500 copies of the minutes of the
3833 meetings heretofore held, and to print that number of copies of the minutes of each meeting as it occurs.

The President informed the Board that the Mayor has directed the minutes of the meetings to be published from day to day in The City Record.

Upon motion of Mr. Delamater, it was

Resolved, That the Secretary be and hereby is ordered to prepare an abstract of so much of chapter 606, Laws of 1875, as prescribes the powers
3834 and duties of the Commissioners.

Upon motion of Mr. Brown, the Secretary was directed to convey to the Commissioner of Public Works the thanks of the Board for several maps of the city furnished by him.

Further communications were received from various persons, opened, read, numbered from 52 to 56, inclusive, and filed for consideration.

Communications numbered 24, 35 and 38 were further considered; and the writer of communication numbered 38 was allowed to withdraw one of his diagrams.

The Secretary was directed to request the writer

3835

of communication numbered 44 to make further statement in writing of the details of the plan proposed by him.

Upon motion of Mr. Canda, the Board adjourned to 20th inst., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

3836

Tuesday, July 20, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

The printed minutes of the meeting of July 16, 1875, were read, and, upon motion of Mr. Brown, were approved.

3837

The Secretary, as instructed, reported an abstract of so much of chapter 606, Laws of 1875, as prescribes the powers and duties of the Commissioners—which was read and discussed.

Further communications from various persons were received, read, considered, and numbered from 57 to 71, inclusive.

The Secretary was directed to ascertain, from the Mayor what day will be agreeable to him for inspection of the New York Elevated Railroad, in company with the Commissioners.

Upon motion of Mr. Delamater, adjourned to July 21, 1875, at 12 o'clock M.

3838

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Wednesday, July 21, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

3839

The printed minutes of the meeting of the Board, held July 20, 1875, were read, and, upon motion of Mr. Delamater, were approved.

Communications from several persons were received, read, considered and numbered from 72 to 74, inclusive.

Upon motion of Mr. Canda, it was

Resolved, That, the Mayor having indicated that 11 A. M., on the 22nd inst., will be a time convenient to him for inspecting the New York Elevated Railroad, the President of the company be notified that the Commissioners will then accompany the Mayor to the office of the company for that purpose.

3840

The Secretary was directed to express to the writer of communication numbered 74 the thanks of the Board for his suggestions, and for the thoroughness of the discussion made in his previous communication.

Upon motion of Mr. Brown, adjourned to 23rd inst., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

3841

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Friday, July 23, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

3842

The printed minutes of the meeting of the Board, held July 21, 1875, were read, and, upon motion of Mr. Brown, were approved.

Communications from various persons were received, read, considered, and numbered from 75 to 85, inclusive.

Upon motion of Mr. Mott, it was

3843

Resolved, That the Secretary be and hereby is directed to notify the New York Elevated Railroad Company that, if they desire to be heard by counsel or other representative in reference to the application heretofore made by the company for leave to extend their line of road, an opportunity will be offered for such hearing on the 28th, 29th, or 30th inst., as may be more convenient to the company—the hearing to be at this office, at 12 o'clock M.

Upon motion of Mr. Canda, adjourned to July 27, 1875, at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

3844

Tuesday, July 27, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

The printed minutes of the meeting held July 23, 1875, were read, and, upon motion of Mr. Mott, were approved.

3845 The Secretary reported that he had given to the New York Elevated Railroad Company the notice by Resolution of the last meeting directed to be given, and read to the Board the reply of the President of that company, designating the 30th inst. for the hearing.

Communications from various persons were received, read, considered and numbered from 86 to 105, inclusive.

Upon motion of Mr. Delamater, it was

3846 Resolved, That the Secretary be and hereby is directed to notify the Gilbert Elevated Railroad Company that the Board desires to hear them by counsel and by such other representatives as they may designate, in reference to the application made and statements set forth in the communication today received from them; and that the Board indicates the 29th instant, at twelve o'clock M., at this office, as the time and place for such hearing, if the company can be then ready; otherwise, the 3d proximo, at the same hour and place.

Upon motion of Mr. Canda, adjourned to July 28, 1875, at twelve o'clock M.

Burton N. Harrison, Acting as Secretary.

3847

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Wednesday, July 28, 1875—12 o'clock M.

The Board met, pursuant to adjournment.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Brown, Mr. Canda was requested to act as Secretary of the meeting.

3848

Upon motion of Mr. Brown, the reading of the minutes was dispensed with.

Further communications were received from various persons, opened, read, numbered from 107 to 113, inclusive, and filed for further consideration.

Upon motion of Mr. Mott, the Secretary was directed to communicate with the writer of communication 109, and to ask him to give evidence that he can secure the capital required to build a rapid transit road on his plan.

Upon motion of Mr. Delamater, it was

3849

Resolved, That the question of appointing engineers will be the special business of the Board at its next meeting.

Upon motion of Mr. Mott, adjourned to 29th inst., at 12 o'clock M.

C. J. Canda, Secretary of the meeting.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Thursday, July 29, 1875—12 o'clock M.

3850 The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

The printed minutes of the meetings held on the 27th and 28th July, 1875, respectively, were read, and, upon motion of Mr. Brown, were approved.

Communications from various persons were re-
3851 ceived, read, considered and numbered from 114 to 121, inclusive.

The writer of communication 115 was allowed to withdraw his plans, heretofore forwarded to the Board.

Pursuant to notice sent by the Secretary, as directed by Resolution of 27th instant, the President of the Gilbert Elevated Railway Company, accompanied by the Counsel of the Company, appeared before the Board, and had a hearing in reference to the application made and statements set forth in the communication on the 27th instant received
3852 by the Board from that Company.

At the request of the President of the New York Elevated Railroad Company, the hearing intended to be accorded to that company on the 30th instant, was adjourned to next week, to enable Counsel for the company to be present.

Mr. Canda reported that he has communicated, as directed, with the writer of communication 109, who is unable to claim that he can at present secure the capital required to build the proposed road.

Upon motion of Mr. Canda, adjourned to July 30, 1875, at 12 o'clock M.

Claimants' Exhibits.

3853

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Friday, July 30, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda. 3854

The printed minutes of the meeting held July 29, 1875, were read, and, upon motion of Mr. Delamater, were approved.

Communications were received from various persons, read, considered and numbered from 122 to 128, inclusive.

Upon motion of Mr. Delamater, the Secretary was directed to notify the writers of communications 81, 120, 46, and 116, respectively, that half an hour will be devoted to each of them by the Board, on the 2d prox.—and the writers of communications 26, 32, and —, that half an hour will 3855 be devoted to each of them by the Board, on the 3d prox.—to enable each of them to make such further statement as may be desired to be made with regard to the suggestions in his said communication advanced, and particularly to enable each of them to show, if possible, that capital is ready to construct a Rapid Transit Railway upon his plan.

Upon motion of Mr. Canda, adjourned to August 2, 1875, at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

3856

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Monday, August 2, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

3857

Upon motion of Mr. Brown, Mr. Canda was requested to act as Secretary of the meeting.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

In compliance with the notices sent by the Secretary, by direction of the Board at the last meeting, Messrs. Meyer & Widmayer, Charles L. Haswell, and T. W. Evans appeared before the Board, and were heard relative to their respective plans, each for half an hour.

Communications from various persons were received, read, considered and numbered from 138

3858 to 158, inclusive.

Upon motion of Mr. Mott, adjourned to 3d instant, at 12 o'clock M.

C. J. Canda, Secretary of the meeting.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Tuesday, August 3, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

3859

Present—The President, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

Upon motion of Mr. Canda, it was

Resolved, That Isaac Newton be and hereby is employed as one of the Engineers of the Board, to be subject to the directions of the Board from day to day—but with the understanding that the amount of compensation for such services as he may render shall be hereafter determined by the Board; and that no part of such compensation 3860
shall be payable until or unless a corporation shall be organized by the Board, and an assessment made upon and collected from the subscribers to the capital stock of such corporation; and that such compensation shall be payable only from and out of the amount of the assessments so to be collected.

In compliance with the notices sent by the Secretary, by direction of the Board at the meeting held on the 30th ult.,

Messrs. George H. Kitchen and Walter J. Morris 3861
appeared before the Board, and were heard relative to their respective plans of construction, each for half an hour.

Mr. Richard P. Morgan, Jr., having been unable to attend before the Board at the last meeting, as advised by the Secretary's notice, was now heard by the Board for half an hour relative to his plan of construction.

Mr. Gomez, being in attendance, was heard by the Board for half an hour, relative to the plan of construction heretofore proposed by him.

Communications were received from various

3862 persons, read, considered and numbered from 159 to 170, inclusive.

Upon motion of Mr. Delamater, adjourned to the 4th inst., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Wednesday, August 4, 1875—12 o'clock M.

3863 The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

The printed minutes of the meetings held July 30, August 2 and August 3, 1875, respectively, were read, and, upon motion of Mr. Mott, were approved.

Communications were received from various persons, read, considered, and numbered from 171 3864 to 178, inclusive.

Upon motion of Mr. Mott, it was

Resolved, That Samuel H. Shreve be and hereby is employed as one of the Engineers of the Board, to be subject to the directions of the Board, from day to day—but with the understanding that the amount of compensation for such services as he may render shall be hereafter determined by the Board; and that no part of such compensation shall be payable until or unless a corporation shall be organized by the Board, and an assessment

3865

made upon and collected from the subscribers to the capital stock of such corporation; and that such compensation shall be payable only from and out of the amount of the assessments so to be collected.

In compliance with the invitation of the Board, the President of the New York Elevated Railroad Company, accompanied by the Counsel and by several of the Directors and principal stockholders of the Company, appeared before the Board, and were heard in reference to the applications by that Company heretofore addressed to the Board.

3866

Upon motion of Mr. Delamater, the Secretary was directed to notify the writers of communication 118 that, if they desire to be heard by the Board, an opportunity will be afforded on the 6th instant, at 12 o'clock M.

Upon motion of Mr. Brown, adjourned to the 6th instant, at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

3867

City of New York, Office of the Board, New Court-house.

Friday, August 6, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—Four of the Commissioners, viz.: The President, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

The printed minutes of the meeting held on the 4th inst., were read, and, upon motion of Mr. Delamater, were approved.

Further communications were received, read

3868 considered and numbered 179 and 180, respectively.

In compliance with the notice to them, by the Secretary given, Messrs. J. B. & J. M. Cornell, with their Engineer, appeared before the Board, and explained the details of the plans of construction by them heretofore submitted, and their reasons for selection of the route by them proposed.

Mr. Catherwood, Captain J. V. Meigs, and Col. Snow, the latter representing the "Single Rail Elevated Railway Construction Co.," also appeared
3869 before the Board, each consuming the time necessary to explain plans of construction by him heretofore submitted.

Upon motion of Mr. Canda, adjourned to 10th inst., at 12 M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Tuesday, August 10, 1875—12 o'clock M.

3870 The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Brown, the reading of the minutes was dispensed with.

Mr. William Foster, President of the Gilbert Elevated Railway Company, accompanied by Grosvenor P. Lowrey, Esq., of Counsel for that Company, had a further and protracted hearing before

3871

the Board, as to the routes by them heretofore proposed.

Mr. J. M. Cornell, accompanied by Mr. A. C. Stimers, his Engineer, had a further and protracted hearing before the Board, in which the latter further explained their proposed route and plan of construction, etc., and the former was questioned by members of the Board, as to the capital relied on by him for the enterprise.

Upon motion of Mr. Delamater, adjourned to 11th inst., at 12 M.

3872

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Wednesday, August 11, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

3873

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

The President of the Gilbert Elevated Railway Company had a further hearing before the Board, in which he changed somewhat the route yesterday by him requested to be fixed, determined and located.

In compliance with the notice heretofore given by the Secretary, General E. W. Serrell and others attended before the Board, and spent half an hour

in explaining the plans of construction by them heretofore submitted through J. G. Wilson.

Communications from various persons were received, read, considered and numbered from 181 to 185, inclusive.

The remainder of the session was devoted to a further and protracted hearing of Mr. M. Courtright, the President, and Mr. William L. Scott, one of the Directors, of the New York Elevated Railroad Company, with regard to routes by them asked to be determined as extensions of the present
3875 line of the railway of that Company.

Upon motion of Mr. Mott, adjourned to 12th inst., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Thursday, August 12, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

3876 Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Canda, the reading of the minutes was dispensed with.

Communications from various persons were received, read, considered and numbered from 186 to 190, inclusive.

In pursuance of the understanding heretofore had, the several Commissioners spent some time upon the premises of Mr. Speer, the author of a plan of what has been called a "traveling sidewalk," examining into the merits of that invention.

3877

Upon motion of Mr. Delamater, adjourned to 13th inst., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Friday, August 13, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

3878

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Brown, the reading of the minutes was dispensed with.

In compliance with the notice to them heretofore given by the Secretary, Mr. Courtright, Mr. Scott and others, representing the New York Elevated Railroad Company, and Mr. C. K. Garrison and others, representing the Gilbert Elevated Railway Company, attended before the Board, and there ensued protracted discussions, of the propo- 3879
sitions of said Companies respectively made to the Board for routes by them asked to be determined, and of the terms and conditions upon which, if at all, the Board will comply with the requests by those Companies or either of them heretofore made.

That discussion consumed more than two hours, when,

Upon motion of Mr. Mott, the Board adjourned to 16th inst., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

3880 *Claimants' Exhibits.*

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Monday, August 16, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

3881 Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

Two hours were spent in discussion, between the members of the Board, of the routes heretofore proposed to them to be determined.

Upon motion of Mr. Canda, seconded by Mr. Delamater, it was

Resolved, That Burton N. Harrison, Esq., who has been from the time when the Board was organized, acting as Counsel to the Board, be and hereby is formally employed and retained as Counsel to the Board, and be and hereby is authorized to
3882 retain and consult such special Counsel as he may consider to be desirable; and that he be and hereby is requested to advise the Board, at the earliest practicable moment, of the precise nature and extent of the present duties and of the powers of the Board, under section 4 of chapter 606, Laws of 1875.

Upon motion of Mr. Brown, adjourned to 17th instant, at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

Claimants' Exhibits. 3883

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Tuesday, August 17, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

In the absence of Mr. Harrison, Mr. Canda was 3884
requested to act as Secretary.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

The session was spent in discussion by the Commissioners, among themselves, of the several routes heretofore proposed to be determined.

Upon motion of Mr. Brown, the Secretary was directed to notify the officers of the New York Elevated Railroad Company, and those of the Gilbert Elevated Railway Company, that they are desired to attend at the meeting of the Board to be held on the 19th instant, at 12 o'clock M., then, if pos- 3885
sible, to enable the Board to ascertain whether the terms and conditions desired to be exacted from each of those Companies, in case a route satisfactory to it is determined, will be accepted and performed.

Upon motion of Mr. Mott, adjourned to 18th instant, at 12 o'clock M.

C. J. Canda, Acting as Secretary of the Meeting.

3886

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Wednesday, August 18, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—Four of the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater and Charles J. Canda.

3887

Upon motion of Mr. Canda, the reading of the minutes was dispensed with.

Mr. Harrison reported that, in compliance with the directions of the Board, he has investigated several questions arising under section 4 of chapter 606, Laws of 1875, as to the powers and present duties of the Board; and that, after careful consideration of the difficulties which occur to the Commissioners in those respects, he has reached definite conclusions, in which he has been assisted and confirmed by the advice of James Emott, Esq., who has been retained and consulted by him as

3888

Special Counsel to the Board. He then stated those conclusions, and indicated his expectation that, by to-morrow, he will be able to furnish to the Board the opinion, in writing, of Mr. Emott upon the two points of most immediate interest.

Upon motion of Mr. Delamater, the employment of Mr. Emott, as Special Counsel, was approved and ratified.

Communications from various persons were received, read, considered and numbered from 191 to 195, inclusive.

The remainder of the session was spent by the Commissioners in further discussion among them-

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selves of the several routes heretofore proposed to the Board to be determined.

Upon motion of Mr. Brown, adjourned to 19th inst., at 12 o'clock M.

Burton N. Harrison, Acting as secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Thursday, August 19, 1875—12 o'clock M.

3890

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

Mr. Harrison submitted, for the information of the Board, an opinion in writing by James Emott, Esq., Special Counsel, which was ordered to be copied into the minutes, and is as follows:

3891

"In my opinion, the Commissioners of Rapid Transit are not required to obtain the consent of the local authorities or of the adjacent property owners before locating the route of a railway, under chapter 606 of the Laws of 1875.

That act, as appears by its title, is a general law, such as is required by the Constitution, to provide for the construction and operation of steam railways in cities—in other words, what are known as rapid transit roads. By its provisions, certain very important functions are exclusively conferred upon a Board of Commissioners created under it.

3892 They and they only, and within definite and brief periods of time, are to determine, first, whether such a rapid transit road is necessary in the City of New York, for instance; and, next, upon what route it ought to be constructed. They are not to seek the advice or concurrence either of the Common Council or of adjacent owners upon these points any more than upon the question of the mode of construction and of operation, which they are also to prescribe.

I think the act contemplates and intends that 3893 the location of the route of the road by the Commissioners shall be the first step towards its construction, its necessity having been previously determined, and that this location is preliminary to all other proceedings.

This location and the organization of a Company or corporation, and its authorization to construct the road on the selected locations, are all, however, to be fruitless, unless the local authorities consent to the use of the streets selected, and the adjacent owners consent, or, if they refuse, Commissioners appointed by the Supreme Court 3894 consent for them.

This, I think, is the meaning of the last clause of the fourth section of the act.

The Constitution of the State requires not only that these assents should always be obtained, but that any law to be passed to authorize the construction of such a railway, should contain a provision requiring them.

I think this clause of section four should be construed as a compliance with this constitutional requirement, and that the word 'provided,' with which the clause commences, should be read as applicable to the construction and operation of the

3895

road, and not to the preliminary acts of the Commissioners in determining its necessity, or locating its route, or either of them.

The meaning is not that the Commissioners shall locate the road where they determined it ought to go, if they can get the local authorities to agree with them, and the adjacent owners to assent; but that, notwithstanding the determination of the Commissioners and their selection of a route, the road shall not be built or operated where these officers say it ought to go, unless the local authorities and the adjacent owners, or Commissioners 3896
appointed by the Supreme Court, consent to that location.

It is unnecessary to go over the reasoning which has led to this conclusion.

Nearly all of which can be said on that side of the question has been forcibly stated in an exhaustive opinion by G. P. Lowrey, Esq., in whose reasoning after careful consideration, I concur, in the main. It is proper to add, that, while I have been assisted by Mr. Lowrey's opinion in considering this question, I have also had the reasons, why his view should be distrusted or rejected, which occurred to the Commissioners, very clearly and 3897
fully stated by Burton N. Harrison, Esq., Counsel to the Board.

But I do not feel any hesitation in advising the Board that they may locate the route for such road or roads as they have determined to be necessary, without waiting to procure the consent of the public authorities or private owners to their location.

I am also prepared to answer another question put to me by the Commissioners, namely: Whether these consents may be given and taken in advance of the organization of the company or cor-

porate body which is to build the road. I see no reason why they may not.

These consents are not contracts or conveyances requiring a second party to receive and hold them. They are acts required by constitutional and statutory law to authorize the construction and operation of such a road as this statute provides for. I regard them as the performance of a statutory condition, a compliance with statutory requirements, which is the act of the authorities or parties alone, and which need not await the organization of the corporate body which is to avail itself of the consent thus given to acts and constructions which it will in other ways become authorized to complete.

James Emott.

Dated, New York, August 19, 1875."

The opinion of Grosvenor P. Lowrey, Esq., above referred to by Mr. Emott, was given by him as Counsel to the Gilbert Elevated Railway Company, but was by that Company placed at the service of the Board, and was ordered to be copied into the minutes.

It is as follows:

'New York, August 10, 1875.

A true grammatical construction of the fourth section of the act undoubtedly seems to require that the consent of local authorities, or property owners, should be obtained before the route of a railway shall be located by the Board of Rapid Transit Commissioners. It is not at all uncommon, however, for the Courts, in interpreting statutes, to disregard the strict obligations of grammatical construction when they would lead to practical ab-

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surdity, and when the context, the existing circumstances or other sufficient evidence tend to show that the legislative intention is not truly rendered by the words in their limited grammatical sense. It is a matter of grave responsibility to determine, in advance of adjudication by authorized tribunals, that reasons exist which will justify a statutory construction contrary to or varying the customary meaning of words used in the statute. Under that responsibility, I am of opinion that the words 'provided that the consent, etc., be first obtained,' mean that the consent shall be 'first obtained' be- 3902
fore any actual occupation of streets for the placing of a railway or any of its parts; that all the consents required by the statute will be well obtained if then obtained; and that a valid performance of the duties cast by law upon the Commissioners is in nowise dependent upon the prior consent of any local authority or private person.

This opinion is arrived at from a contemplation of the whole act. An analysis of this general view will, it is believed, show it to be well supported by all the particular considerations which arise upon the different parts of the act, and otherwise.

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1st. The statute is to be read in the light of the Constitution.

The Constitution prohibits the Legislature from passing any law to authorize 'the construction or operation of a street railroad,' except upon condition that the consent of property owners, etc., be first obtained.

There is nothing, beyond the words now under consideration, to indicate a purpose in the Legislature to do more than comply with the Constitution; that is, to make provision against the

3904 'construction and operation' of a railroad without this assent. The imagining a route by a Board of Commissioners, and laying it down on paper—the advertising it as a route in the newspapers—would not prejudice the rights or even convenience of the local authorities, or of property owners. And, judging by ordinary motives, it is not probable that the Legislature should have intended to provide so broad and powerful a protection against that which could harm no one.

3905 2d. By the scheme of the whole act, the Commissioners are to exercise specific and limited functions, severally performable within certain periods of time. The time in which they may make a paper location of the route or routes of railways is sixty days. It would be impossible within sixty days, even if the route were resolved upon and located on the first of those days, to obtain the consent or dissent of all actual owners of property along a route so extended as such a railway route must be. It is only necessary to suggest the difficulty in first ascertaining certainly who are legal owners, and in taking the necessary proceedings

3906 where minors or other persons under legal disability are owners; and but a slight experience in such matters will indicate a much longer period than sixty days as necessary for such a work, especially where these sixty days were given and must be employed for study, reflection and judgment upon the question, among others, of the proper streets for a route or routes.

It is against reason to suppose that the public (through the Legislature) should ask five gentlemen to perform a great public duty, and, having first fixed a time as to the performance of acts within their control, should also require them to

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accomplish certain other results in that period, dependent on the volition of other persons, without at once providing for an extension of time in case the refusal of, or unavoidable failure to obtain, those results should delay the performance of the principal duty. This consideration furnishes a strong argument against the idea that these consents are to be obtained by this Commission preliminarily to the paper location of railways.

3d. The act contemplates that routes will be laid out by this Commission coincident with existing routes belonging to companies organized prior to the passage of the Rapid Transit Act, such as The Gilbert Elevated Railway Company, in which case the existing Company has the right to build such structure as the Commissioners prescribe, to the exclusion of any company formed by them. In all such cases, this obtaining of consent of either local authorities or property owners is an idle ceremony where those routes had been assigned and the right to build upon them had vested prior to the adoption of the Constitutional Amendments. It is not supposable that the Legislature meant, in such cases, to require this work of supererogation.

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4th. The act is to be read with the practical purposes of its makers in view. Being so read, it is clear that the prior consent required by the Legislature is that required by the Constitution, *i. e.*, a consent to the doing of some act injurious to or contrary to the convenience of the person whose consent is sought. Since the mere designation upon a map of a route is not such an injury, either to property owners or local authorities, it is clear, I think, that the Courts, when asked, will give

3910 short answer to any objection that a valid location (*i. e.*, a mere intellectual judgment and resolution of the subject—properly expressed by plans, maps, or otherwise), cannot be made until consent to the formation of such judgment or resolution has been obtained from local authorities and property owners.

These conclusions are demonstrable by other arguments, drawn from the act, did time permit.

Many of the difficulties, spoken of above, relate to the consent of property owners. There are
3911 special reasons why the Board of Commissioners ought, as an official body, to deal with all other official bodies, especially in this stage of proceedings; and why, having in view the complete consummation of the purpose of their appointment, they ought to seek and obtain, for the benefit of whom it may concern, the consent of the local authorities. Reasons for supposing that this may now be done by the Commissioners, with the aid and approval of the Mayor, easily and immediately, whereas the company to be organized might be delayed and possibly prejudiced, will at once
3912 occur to the mind and need not be stated.

'Grosvenor P. Lowrey.'

Mr. Mott also submitted to the Board the opinion of George W. Van Siclen, Esq., which had, several weeks ago, been solicited by him. It was ordered to be copied into the minutes, and is as follows:

'New York, 5th August, 1875.

Jordan L. Mott, Esq.,

Commissioner for 'Rapid Transit,' etc.:

Dear Sir—In answer to your request for my

opinion on the construction of section 4 of chapter 606, Laws of New York, 1875, I submit the following:

A statute should be so construed as to make it effective, rather than to destroy it.

2 Roll, 127; Hob., 93.

A statute must be expounded according to the meaning, and not according to the letter.

Pillow *vs.* Bushnell, 5 Barb., 159.

People *vs.* N. Y. Central R. R., 13 N. Y., 78.

3914

The intention of the Legislature is to be gathered from the act itself. Sometimes it is to be collected from the cause or necessity of the statute; and, wherever that can be discovered, it ought to be followed with reason and discretion in the construction, although such construction seem contrary to the letter of the statute.

Where any words are obscure, the intention of the Legislature is to be resorted to.

Bac. Abr. tit. Stat. I., 5, 10.

People *vs.* Utica Ins. Co., 15 Johns, 358.

Dresser *vs.* Brooks, 3 Barb., 429—and authorities cited. 3915

It is an established rule, in giving construction to a statute, first to ascertain its intent. This may be determined from the language of the whole and every part of the statute. When ascertained, it should be followed with reason and discretion; although such construction may seem contrary to the letter of the statute; for it is the intent which often gives meaning to words otherwise obscure and doubtful.

Holmes *vs.* Carley, 31 N. Y., 289.

Chase *vs.* N. Y. Central R. R., 26 N. Y., 523.

3916

To the same effect—

James *vs.* Pattern, 6 N. Y., 9.

Section 4 of the 'Rapid Transit' Act reads as follows:

'§4. Said Commissioners shall, within thirty days after such organization, determine upon the necessity of such steam railway or railways, and, if they find such railway or railways to be necessary in such county, they shall, within sixty days after such organization, fix and determine the

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route or routes for such steam railway or railways, and the said Commissioners shall have the exclusive power to locate the route or routes of such railway or railways over, under, through or across the streets, avenues, places or lands in such county, except "Broadway and Fifth avenue, below Fifty-ninth street, and Fourth avenue, above Forty-second street, in the City of New York," and except such portions of streets and avenues as are legally designated for the main line of or occupied by an elevated or underground railway in actual operation, and except such as are contained in

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public parks or occupied by buildings belonging to such county, or to this State or to the United States, and except that portion of the City of Buffalo lying between Michigan and Main streets, and to provide for the connection or junction with any other railway or bridge, provided that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of, that portion of a street or highway upon which it is proposed to construct or operate such railway or railways, be first obtained; or, in case the consent of such property owners cannot be obtained, that the de-

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termination of three Commissioners appointed by the General Term of the Supreme Court in the District of the proposed construction, given after a due hearing of all parties interested, and confirmed by the Court, that such railway or railways ought to be constructed or operated, be taken in lieu of the consent of such property-owners.'

The questions submitted in this section are:

1. Must the consent of the owners of one-half in value of property bounded on the street upon which the proposed road is located be obtained first, that is, before the road is located?

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2. Must the consent of Commissioners appointed by a General Term of the Supreme Court, in lieu of the consent of the owners of half in value of the property, be likewise first obtained?

3. Must the consent of the local authorities be likewise first obtained?

4. Do the expressions 'fix and determine the route,' and 'locate the route,' give one and the same power, or different powers, to the Commissioners?

5. Is the consent of any railway company necessary?

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In view of the well-established principles of law which I have cited, the following summary, in my judgment, embodies correct answers to these questions.

To insist that the consent of the owners of one-half in value of the property on those portions of those streets upon which you may decide to locate any railway, shall be first obtained, that is, before you locate (and, still more, after you locate), and within sixty days after your organization, would

3922 be to render this statute practically impossible—that is, would destroy it.

Such an exposition might be of the letter, but not according to the meaning, in view of the intention of the Legislature, in inserting those words in section 4. That intent was to conform to §18, article 3, of the State Constitution; that is after you have located the route, and before taking any other necessary steps, get such a consent. The Constitution requires this in every such case.

Again, it is practically impossible to obtain such
3923 consent wherever you may locate; suppose, therefore, you apply to the General Term of this District for the appointment of Commissioners; more than sixty days must elapse from your organization—the next General Term sits in October—but by section 38 of your act (at the end), it is 'provided, however, that the time, if any, unavoidably consumed by the pendency of legal proceedings, shall not be deemed a part of any period or time limited in this act.'

Obviously, the foregoing remarks as to the intent of the Legislature, apply also to the obtaining the
3924 consent of the local authorities having control of those portions of streets upon which you may decide to locate; it is simply that the requirements of the State Constitution shall be complied with—not within sixty days after your organization (of that the Constitution says nothing), but within a reasonable time, and before anything else is done after you shall have located the route.

I am of opinion that the phrases 'fix and determine the route or routes' and 'locate the route or routes' are one and the same thing; that the Legislature first say that, within sixty days after your organization you shall fix and determine the route

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or routes; and then, that no possible question as to your authority may arise, the Legislature simply added, that you 'shall have the exclusive power to locate the route,' etc.

And, finally, no existing city railway company can be said to be the 'owner of property bounded on' any portion of any street you may propose to construct a railway upon, simply because of its having a right of way through the centre of the street, and owning the tracks, etc., in the street. A right of way through or over is not 'property bounded on' the street.

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First—Within thirty days after organization, pass a resolution:

'Resolved, That a steam railway (or railways), for the transportation of passengers, mails or freight, is (or are) necessary in the City and County of New York.'

Second—Within sixty days after organization, declare that you fix and determine the route (or routes) for such steam railway (or railways) to be as follows: * * * and you hereby locate the route (or routes) of such railway (or railways) as follows: * * * and thereupon employ counsel to obtain appointment of three Commissioners in lieu of the consent of property owners; and also obtain the consent of the local authorities.

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You will then have complied with section 4.

Yours respectfully, Geo. W. Van Siclen, of Counsel, etc.'

Upon motion of Mr. Mott, the President of the Board was authorized and directed to forward to the Mayor a communication by the President

3928 signed, but by Counsel prepared, in terms as follows:

Office of Board of Commissioners of Rapid Transit, New York, August 19, 1875.

To his Honor William H. Wickham, Mayor, etc.:

Sir—I am directed by the Board of Commissioners appointed by you, by and under authority of chapter 606, Laws of 1875, to forward the accompanying draft Resolution, which this Board considers useful, if not necessary; and to request
3929 you to transmit it to the Honorable the Common Council, with your recommendation that it be passed, if, indeed, it meets your approval.

Very respectfully, Joseph Seligman, President Rapid Transit Commission.

The draft Resolution referred to is as follows:

Whereas, Joseph Seligman, Cornelius H. Delamater, Jordan L. Mott, Lewis B. Brown, and Charles J. Canda, by appointment of the Mayor, Commissioners to locate a railway or railways in this city, under the provisions of chapter 606, Laws
3930 of 1875, have, through his Honor the Mayor, made application to the Common Council for its consent to the location, construction and operation of a steam railway or railways upon such of the streets, avenues or places in this city as said Commissioners may deem most advantageous and convenient for the use of the inhabitants thereof, and of the traveling public generally, such railways to be constructed upon plans, and in a manner to be prescribed by said Commission, and upon special routes to be selected by them; and

Whereas, It is deemed for the public interest

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that said Commissioners shall be unembarrassed during the full time allowed them to determine and fix the routes of such railway or railways and connections, and be free, during such period, to select, in the exercise of the discretion conferred upon them by the Legislature, for such route or routes, any street, avenue or place, or a part thereof, in this city, limited only by the terms of the act under which they are organized; therefore,

Resolved, That consent is hereby given for the location, construction and operation of steam railways or connections thereof, in, over, under, through or across any and all streets, avenues, lands and places in this city, subject to the control of this Common Council, over, under, through or across which said Commissioners are now authorized by the act aforesaid to locate railways or connections thereof provided that such of said railways and connections as are to be above the surface of the ground shall be constructed as elevated railways, not less than fourteen feet above the surface of the ground or water—except in River street, along the Harlem river, where the same may be built on piles on or near the surface of the water; and further provided, that any company constructing such railway on River street shall first stipulate in writing, for itself, its successors and assigns, to change their railway on said street to an elevated railway of the description aforesaid whenever said street shall be filled in and such change shall be required by the local authorities having control of said street at the time of such requirement.

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Two hours were then spent by the Commissioners in further discussion with Mr. William L.

Scott, representing the New York Elevated Railroad Company, and with Grosvenor P. Lowrey, Esq., representing the Gilbert Elevated Railway Company, of the routes by them respectively asked to be determined, and of the terms and conditions (as to plan of construction, time of completion and rates of fares) desired by the Board to be complied with and performed.

Upon motion of Mr. Canda, adjourned to 20th inst., at 11 o'clock A. M.

3935 Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Friday, August 20, 1875—11 o'clock A. M.

The Board met, pursuant to adjournment, at 11 o'clock A. M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

3936 Upon motion of Mr. Canda, the reading of the minutes was dispensed with.

The President reported that, acting upon the directions of the Board at the meeting held yesterday given, he immediately forwarded to the Mayor the communication by the Board then directed to be forwarded; the Mayor promptly transmitted the same to the Common Council with a message; that the matter is now under consideration by the Common Council; and that the Mayor's message is in terms as follows:

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Executive Department, City Hall, New York, August 18, 1875.

To the Honorable the Common Council:

Gentlemen—I herewith transmit for your consideration a communication from the Board of Commissioners of Rapid Transit, accompanied by draft of a resolution by that Board desired to be passed by you.

I respectfully recommend that you pass the resolution as requested; and, as time is now of importance to the Board of Commissioners, I further recommend that the resolution be adopted at the earliest practicable moment. By passing the resolution, you really but give effect to your own purposes, expressed several months ago by recommending the Legislature to enact the bill drafted by you to provide for Rapid Transit. And the action now recommended by me is but a fit conclusion to your then efforts for the consummation which we all have so long desired, and which is the practical accomplishment of Rapid Transit in the city.

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W. H. Wickham, Mayor.

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In compliance with an invitation to him extended, Sir Edwin Watkin, M. P., President of the London Underground Railway Company, attended before the Board and spent an hour in explanation, in reply to questions from the Commissioners, of the difficulties encountered and results obtained by that Company, and of the cost and pecuniary returns of the enterprise.

The remainder of the session was devoted to further discussions, with Mr. William L. Scott, and the President of the New York Elevated Railroad

3940 Company, of the topics with Mr. Scott considered yesterday.

Upon motion of Mr. Brown, adjourned to 23d inst., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Monday, August 23, 1875—12 o'clock M.

3941 The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

The printed minutes of the meetings held August 6, 10, 11, 12, 13, 16, 17, 18, 19, and 20, 1875, respectively, were read, and, upon motion of Mr. Mott, were approved.

Communications were received from various persons, read, considered, numbered and filed.

3942 The Board spent two hours in further discussion of proposed routes.

Upon motion of Mr. Brown, adjourned to August 24, 1875, at 2 o'clock P. M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Tuesday, August 24, 1875—2 o'clock P. M.

The Board met, pursuant to adjournment, at 2 o'clock P. M.

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Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Brown, the reading of the minutes was dispensed with.

Communications were received from various persons, read, considered, numbered and filed.

Mr. Courtright, the President, and Mr. William L. Scott, one of the Directors, of the New York Elevated Railroad Company, had a further hearing as to routes of connections asked to be determined for that Company, and as to the conditions and requirements upon which, if at all, the Board will comply with said request.

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Mr. J. E. Serrell was heard in reference to plans of construction heretofore proposed by him and by Mr. James G. Wilson.

After further discussion as to routes, the Board, upon motion of Mr. Delamater, adjourned to the 25th inst., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

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City of New York, Office of the Board, New Court-house.

Wednesday, August 25, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Brown, the reading of the minutes was dispensed with.

3946 *Claimants' Exhibits.*

Communications were received from various persons, read, considered, numbered and filed.

Upon motion of Mr. Canda, it was

Resolved, That the Secretary of this Board be and hereby is directed to communicate with the New York Elevated Railroad Company (inclosing the draft Preamble and Resolutions hereinafter referred to), in respect to the subject-matter of the application of said Company applying to this Board of Commissioners to fix and determine the
3947 route or routes by which the New York Elevated Railroad, an elevated steam railway now, and at the time when chapter 606 of Laws of 1875 was enacted, in actual operation, may connect with other steam railways or the depots thereof, or with steam ferries; and to request from that Company information for this Board of Commissioners whether said Company is legally empowered and is willing (in case there be by this Board of Commissioners fixed and determined a route or routes by which said railway may connect with other steam railways, or the depots thereof, or with steam ferries) to bind itself in form satisfactory to this Board of
3948 Commissioners to the performance of each and all the requirements and conditions set forth in the certain draft Preamble and Resolutions, which have been by counsel prepared and submitted to this Board of Commissioners to be proposed to said Company for adoption; and to request further that, in case said Company is so able and willing, it will do so, and will signify such ability and willingness, and the fact that said Company has bound itself, by the passage and adoption of the said Preamble and Resolutions, and by returning the said draft Preamble and Resolutions so passed

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and adopted to this Board of Commissioners, duly certified over the corporate seal of the Company, attested by the Secretary of the Company, as and for the consideration and basis of such further action as this Board of Commissioners may see fit to take upon the said application of said Company.

Mr. J. B. Cornell, accompanied by his Engineer, Mr. Stimers, had a further and protracted hearing as to the route and plans of construction by them proposed, submitting propositions for modifications of the route heretofore designated.

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Mr. William Foster, Jr., President of the Gilbert Elevated Railway Company, accompanied by Mr. Navarro and others, and by Grosvenor P. Lowrey, Esq., and Henry M. Alexander, Esq., of counsel, had a further and protracted hearing as to the route by them proposed to be determined coincident with the route of the Gilbert Elevated Railway Company, and as to the conditions and requirements upon which, if at all, the Board will comply with that proposition.

Upon motion of Mr. Brown, adjourned to 26th inst., at 12 o'clock M.

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Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Thursday, August 26, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

Communications from various persons were received, read, considered, numbered and filed.

The Secretary reported that, in compliance with the Resolution of the Board at the last meeting adopted, he has forwarded to the New York Elevated Railroad Company the following communication and the papers therein referred to:

Office of the Board of Commissioners of Rapid Transit, New York, August 25, 1875.

3953 To the President and Directors of the New York Elevated Railroad Company:

Sirs—Inclosed please find copy Resolution this day adopted by the Board of Commissioners appointed by the Mayor under the provisions of chapter 606 of Laws of 1875, and copy of the draft Preamble and Resolutions therein referred to.

The requests in the said Resolution of the Board of Commissioners directed to be made of the New York Elevated Railroad Company are hereby made, and a prompt reply is desired.

Very respectfully, your obedient servant, Burton
3954 N. Harrison, Acting as Secretary.

Mr. Catherwood had a hearing before the Board as to the plans of construction by him heretofore proposed.

Messrs. Foster, Lowrey, Navarro, Alexander, and others connected with the Gilbert Elevated Railway Company, and Mr. Scott, of the New York Elevated Railroad Company, had further hearings before the Board as to propositions heretofore by those Companies made concerning routes.

Upon motion of Mr. Delamater, it was

Resolved, that Burton N. Harrison, Esq., Coun-

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sel to the Board, be and hereby is requested to prepare and submit to the Board, an opinion in answer to the following questions, with authority to secure an opinion also from such special counsel as he may prefer to consult:

First.—Has the Board the power to determine and locate, over or across Broadway and Fifth avenue, below Fifty-ninth street, and over, through, or across the places or lands contained in a public park, the route or routes by which the New York Elevated Railroad may connect with other steam railways or the depots thereof, or with steam ferries?

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Second.—Has the Board the power to determine and locate, for the New York Elevated Railroad Company a route or routes, from the southern terminus (at No. 7 Broadway) of the present railway of that Company, to the South Ferry, thence over and through streets to the Bowery, thence over and through the Bowery and Third avenue to the Harlem river, and thence along the Harlem river to connect with the depot of the New York, Boston and Montreal Railroad, which is near the High Bridge?

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Upon motion of Mr. Mott, adjourned to 27th inst., at 12 M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New-York, Office of the Board, New Court-house.

Friday, August 27, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

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Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

Communications were received from various persons, read, considered, numbered and filed.

Mr. Atwood, Mr. Schuyler, and Mr. Martin appeared before the Board, and each had a hearing as to the plans by him proposed.

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Messrs. Foster, Lowrey, Navarro, and others of the Gilbert Elevated Railway Company, and Messrs. Scott and Courtright, of the New York Elevated Railroad Company, had further and protracted hearings before the Board, as to the plans by them severally submitted.

Upon motion of Mr. Delamater, it was

Resolved, That the several members of this Board will meet to-morrow at 10 o'clock A. M., at Mr. Seligman's office—thence to proceed together upon a tour of inspection over each and all of the proposed routes heretofore discussed.

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Upon motion of Mr. Canda, adjourned to the 30th inst., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Monday, August 30, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The Presi-

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dent, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

Communications from various persons were received, read, numbered and filed.

The President reported that on the 28th instant, the several Commissioners had proceeded together in carriages upon a tour of personal inspection of each of the several proposed routes.

The President laid before the Board an interesting and valuable communication forwarded by the Mayor, which had been made to the latter by Hon. Samuel B. Ruggles, with reference to the past and present values of real estate in different localities of the city, and to the future values as affected by a system of cheap rapid transit—showing that the taxable fund of the city will probably be largely increased as the result of the labors of this Board, if they be properly performed.

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Mr. Foster, of the Gilbert Elevated Railway Company, accompanied by Mr. Lowrey, of counsel, and others, and Mr. Scott and Mr. Courtright, of the New York Elevated Railroad Company, had further and protracted hearings before the Board.

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Mr. Samuel Phillips, the President of the Third Avenue Railroad Company, accompanied by Mr. Henry Hart and others of that Company, appeared before the Board and had a protracted hearing, in the course of which they protested and argued against the location of a route along Third Avenue.

In that connection, the President laid before the Board the following communication:

East Side Association (Cor. 86th St. and Third Ave.), New York, August 28, 1875.

3964 *Claimants' Exhibits.*

To the Hon. the Commissioners of Rapid Transit.

Gentlemen—At a special meeting of the Executive Committee of the East Side Association, held at the rooms of the Association, on Friday evening, August 27, 1875, the following Resolutions were unanimously adopted, and accordingly I herewith transmit them to your Honorable Board.

Very respectfully, Thomas J. Crombie, Secretary.

The Resolutions referred to are as follows:

3965 Resolved, That in the opinion of this Association, the Third avenue, being the territorial, population, and business centres of the east side of this city, is the most practicable and best adopted route for a rapid transit railway, with a branch to connect with the Grand Central Depot, at Forty-second street, in order to utilize the rapid transit route, now more than half completed, between the City Hall and the Harlem river, on the Fourth avenue, north of Forty-second street; and this Association hereby respectfully recommends to the Commissioners of Rapid Transit and the Common Council of this city the selection and establishment of that
3966 route, in preference to all others, as being most advantageous to the east side of this city.

Resolved, That a copy of the foregoing resolution, duly authenticated by the Secretary of this Association, be forwarded at once to the Commissioners of Rapid Transit and the Common Council of the City of New York.

Upon motion of Mr. Delamater, adjourned to the 31st inst., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

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Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Tuesday, August 31, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

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Upon motion of Mr. Canda, the reading of the minutes was dispensed with.

Communications were received from various persons, read, considered, numbered and filed.

Messrs. Scott, Courtright and Dows, of the New York Elevated Railroad Company, had a further and protracted hearing, and submitted to the Board the following communication from that Company:

Office of the New York, Elevated Railroad Company, No. 7 Broadway, New York, August 27, 1875.

3969

To the Hon. the Board of Commissioners appointed by the Mayor under the provisions of chapter 606 of Laws of 1875:

Gentlemen—In reply to your communication, dated 25th inst., we have the honor herewith to forward a transcript from the minutes of proceedings of the meeting of the Board of Directors of the New York Elevated Railroad Company, held to-day at the office of the Company.

The transcript is authenticated by the certificate of the President, over the corporate seal of the Company, attested by the Secretary.

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Very respectfully, M. Courtright, President (Seal). J. A. Cowing, Treasurer.

Attest: J. A. Cowing, Secretary.

The transcript from the minutes referred to is as follows:

At a meeting of the Board of Directors of the New York Elevated Railroad Company, held at No. 13 William street, New York City, August 27, 1875.

Present—Milton Courtright, President, David Dows, Director, William L. Scott, Director, John
3971 B. Mairs, Director, John H. Hall, Director, Alfred S. Barney, Director, Francis H. Tows, Director, Harvey Kennedy, Director, James A. Cowing, Director.

The following preamble and resolutions were offered by Mr. Hall and seconded by Mr. Barney, and were adopted by the following vote, to wit:

In favor thereof—Messrs. Courtright, Dows, Scott, Mairs, Hall, Barney, Tows, Kennedy and Cowing.

No one voting in the negative.

3972 Whereas, The Board of Commissioners appointed by the Mayor of the City of New York, under the terms and provisions of chapter 606 of Laws of 1875, has required of this Company certain stipulations and agreements by this Company to be made and agreed to as a condition precedent to fixing and determining the route or routes by which the railway of this Company may connect with other steam railways or the depots thereof, or with steam ferries, such stipulations and agreements to be by this Company fulfilled and performed and the same to be the consider-

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ation for and upon which said Board of Commissioners will fix and determine such route or routes; now therefore,

Resolved, That for and in consideration of the fixing and determination by said Board of Commissioners of the route or routes by which the railway of this Company may connect with other steam railways or the depots thereof, or with steam ferries, such route or routes to be substantially as heretofore by this Company applied for and designated, or such as this Company shall accept in lieu thereof, and for and upon other valuable considerations this Company thereto moving, this Company hereby stipulates, covenants, contracts and agrees with and to said Board of Commissioners, as follows:

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First.—That this Company shall and will construct and complete its railway as follows, subject only to the proviso hereinafter stated as to time of completion:

1st. Over and along so much of the route as shall be by said Board of Commissioners fixed and determined, from the intersection of Greenwich street and Battery place, across Battery place through the Battery and State street to Whitehall street to connect with the South, Hamilton avenue and Staten Island Ferries; thence across Whitehall street to Front street; thence through and along Front street to Broad street; thence through and along Broad street to South William street; thence through and along South William street to John street; thence through and along John street and Burling slip to and across South street to connect with the Fulton Ferry, East river; also from

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3976 the intersection of John street and William street, through and along William street and North William street to Chatham street; thence through and along Chatham street to Chatham square; thence across Chatham square to the Bowery; thence through and along the Bowery to Third avenue; thence through and along Third avenue to East Thirty-fourth street; thence through and along East Thirty-fourth street to and across Avenue A, to and connecting with the Thirty-fourth street and Hunter's Point Ferry, East river; also from the in-
3977 tersection of East Thirty-fourth street and Third avenue, through and along Third avenue to East Forty-second street; thence through and along East Forty-second street to and across Fourth avenue to and connecting with the depot, known as the Grand Central Depot, occupied by the New York Central and Hudson River, New York and Harlem, and the New York, New Haven and Hartford Railroad Companies; also, from the intersection of East Forty-second street and Third avenue, through and along Third avenue to East Fifty-ninth street—before or by the 1st day of Septem-
3978 ber, 1876.

2d. Over and along so much of the route as shall be by said Board of Commissioners fixed and determined, from Fifty-ninth street over and along Third avenue to the intersection of One Hundred and Twenty-fifth street; thence through One Hundred and Twenty-fifth street to First avenue; thence through First avenue to and across the Harlem river, to the depot of the Harlem river and Portchester branch of the New York, New Haven and Hartford Railroad Company; also from the intersection of One Hundred and Twenty-fifth street and Third avenue to One Hundred and

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Twenty-ninth street, and thence through One Hundred and Twenty-ninth street to Lexington avenue; thence through Lexington avenue to River street, on the Harlem river—on or before the 1st day of June, 1877.

3d. Over and along so much of the route as shall be by said Board of Commissioners fixed and determined, through and along River street to the High Bridge, and across the Harlem river, to connect with the New York, Boston and Montreal Railroad or the depot thereof—on or before June 1st, 1878.

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4th. Over and along so much of the route as shall be by said Board of Commissioners fixed and determined, from the intersection of Ninth avenue and West Eighty-sixth street, over and along West Eighty-sixth street to Eighth avenue; thence over and along Eighth avenue to the New York, Boston and Montreal Railroad, or the depot thereof—before or by the 1st day of June, 1878.

The proviso hereinbefore referred to as to time of completion of said several sections or portions of railroad is this, as follows: that the time, if any, unavoidably consumed by the pendency of legal proceedings, or by the interference of the public authorities, shall not be deemed a part of any period of the time within which completion of the railroad is hereby stipulated, covenanted, contracted and agreed to be made. But it is distinctly understood and agreed, by said Board of Commissioners, and by this Company, that the time, if any, during which such unavoidable delay shall continue shall be added to each of the periods hereby otherwise limited for construction and completion of the railway.

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Second.—That this Company accepts and will be governed by, and will charge and collect rates of fares upon such connections only as follows: the same being the rate of fares by said Board of Commissioners fixed and allowed to be by this Company upon such connections collected—as follows:

1st. Upon trains and in cars other than those designated as Commission trains and cars: for all distances under five miles not to exceed ten cents, and not to exceed two cents per mile for

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each mile or fraction of a mile in excess of a mile over five miles until the fare shall amount to not to exceed fifteen cents for a through passenger from and between the Battery and the intersection of Third avenue and One Hundred and Twenty-ninth street, and from and between the Battery and High Bridge not to exceed seventeen cents for a through passenger. And in this connection it is understood and agreed that, for the entire distance from and between the Battery and Fifty-ninth street the fare shall not exceed ten cents per passenger.

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2d. Upon what are hereinafter designated as Commission cars or trains, to be run on the East side of the City for the accommodation of the public and the laboring classes from 5:30 o'clock A. M., to and until 7:30 o'clock A. M., and from 5 o'clock P. M. to and until 7 o'clock P. M., the rate of fare shall not exceed five cents from and between the Battery and Fifty-ninth Street, or for any distance between said points; and shall not exceed five cents for any distance not exceeding five miles; and shall not exceed seven cents for a through passenger from and between the Battery,

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or any point north thereof, and the Harlem river; and shall not exceed eight cents for a through passenger on any of said Commission trains or cars from and between the Battery and High Bridge.

This Company hereby further agrees and binds itself that, when the net income of the road, after all expenditures, taxes and charges are paid, shall amount to a sum sufficient to pay exceeding ten per cent. per annum on the capital stock of the Company, that in that case and within six months thereafter, and so long as said net earnings amount 3986
to a sum sufficient to pay more than ten per cent. as aforesaid, this Company shall and will run Commission trains or cars on all its roads at all hours during which said road is operated, at the rates of fare hereby stipulated for the laboring classes and public on said Commission trains or cars.

It is, however, hereby understood and agreed by and between the said Board of Commissioners and this Company, that, as a part of any train of cars run over any portion of the route or routes of connections of the railway of this Company, there 3987
may be one or more of the kind known as "Saloon cars" or "Drawing-room cars," with special arrangements for extra comfort and space, and that there may be demanded, charged to, and collected from each person, who shall ride in such a "Saloon car" or "Drawing-room car," an extra (though not unreasonable) rate of fare, in addition to the rates hereinbefore mentioned. It is, however, further understood and agreed by and between said Board of Commissioners and this Company, that, as a part of each and every train there shall be cars other than "Saloon cars" or "Drawing-room cars," sufficient to accommodate all persons

3988 who do not prefer to ride in "Saloon cars" or "Drawing-room cars," and who are not willing to pay the extra rate of fare for special arrangements for extra comfort and space; and that, if and whenever there is not accommodation provided in the train on such other cars for each and all the passengers desiring to travel in them, that then, and in that case only, any passenger who may take a seat in a "Saloon car" or "Drawing-room car," shall be entitled to occupy the same without payment of the extra rate of fare other-
3989 wise allowed to be charged in such "Saloon car" or "Drawing-room car."

Third.—That this Company shall and will run daily between the hours of 5:30 and 7:30 A. M. and 5 and 7 o'clock P. M., special cars or trains, to be known and designated as Commission Cars or Trains, in numbers sufficient to accommodate the public and laboring classes; such trains or cars to be run, on the east side of the city, from and between the Battery and the northern terminus of the route at Harlem river—the same to stop regularly at all the regular stations of the Company,
3990 and to be run at the rate of speed of the other local trains.

In this connection it is understood, however, that it shall not be necessary to devote an entire train to the purposes of a "Commission Train," as above provided for, but that the object of this Third paragraph shall be considered to be accomplished if Commission cars, in numbers sufficient to meet the demand of persons desiring to travel in them, shall be provided for the public and laboring classes and attached to trains running during the hours above indicated—in which Commission Cars, only the lower rates of fare above specified shall be charged.

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Fourth.—That in the construction of that section or portion of the railway over and along so much of such route of connections as extends from the Battery to the intersection of William street and Chatham street on the east side of the city, the structure shall be of and for a double track; and from the intersection of William and Chatham streets through Chatham street, the Bowery and Third avenue to East One Hundred and Twenty-ninth street, the structure shall be for three tracks; and the portions of the railway mentioned, including the portions from the intersection of Third avenue and East One Hundred and Twenty-fifth street, through East One Hundred and Twenty-fifth street to First avenue, and through First avenue to and across River street to the Harlem river, and from the intersection of Third avenue and East One Hundred and Twenty-ninth street through East One Hundred and Twenty-ninth street to Lexington avenue, through Lexington avenue to River street on the Harlem river, and along River street to and across Fourth avenue, shall be of such plan, style of construction and material, and of such location, as shall be approved by said Board of Commissioners and the Commissioners of this Company; and that that portion of the road on and along River street, west of Fourth avenue, shall be a surface road until River street is graded and until this Company is required by the city authorities to make an elevated road on and along said street of similar structure to the other portions of the road.

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And that, in the construction of that section or portion of the railway, over and along so much of such route of connections as extends from Ninth avenue, over and along West Eighty-sixth street to Eighth avenue, and thence along Eighth avenue to

3994 the New York, Boston and Montreal Railroad, or the depot thereof, on the west side of the city, the structure shall be of and for a single track railway, of such plan, style of construction and material, and of such location, as shall be approved by said Board of Commissioners and by the Commissioners of this Company, with the privilege to this Company to have, over and along said section or portion of the route, a double track railway, whenever this Company shall desire to have a double track there; and with the understanding and
3995 agreement between said Board of Commissioners and this Company, that this Company shall and will construct a double track railway, over and along said section or portion of the route, whenever and as soon as the number of passengers, in any one year carried upon said section or portion of the route, shall amount to fifteen millions.

Fifth.—That this Company shall and will, upon demand by said Board of Commissioners, pay over to and for the use of said Board, such fair and reasonable proportion of the expenses, etc., of said Board, as by the said Board may be allotted to be
3996 by this Company paid.

Sixth.—That the President and Treasurer of this Company are hereby authorized and directed to make, execute, and deliver, in the name and under the corporate seal of this Company, such indenture and indentures, and each, every, and all such other paper and papers as and whenever, from time to time, by the said Board of Commissioners, or by their counsel learned in the law, shall be required or demanded, the better to express and secure performance of the stipulations, covenants, contracts and agreements, and each and every of

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them, hereinbefore stated or intended by this Company to be made; one of such indentures, in the name and over the corporate seal of this Company, to be the bond and obligation of this Company to "the Mayor, Aldermen and Commonalty of the City of New York," or to "the People of the State of New York," or to such other obligee or obligees as said Board of Commissioners shall by counsel be advised to prefer, and as said Board of Commissioners shall indicate—such bond and obligation to be in the penal sum of two hundred and fifty thousand ($250,000) dollars, with such

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sureties as may by this Company be procured and by said Board of Commissioners be found satisfactory, and conditioned that the said stipulations, covenants, contracts and agreements, and each and every of them, hereinbefore stated or intended by this Company to be made, shall and will be in good faith, fully and as hereinbefore expressed or intended, fulfilled and performed.

Resolved, That a duly certified copy of the foregoing preamble and resolutions, under the seal of this Company, be immediately furnished to the said Commissioners of Rapid Transit.

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Office of the New York Elevated Railroad Company, No. 7 Broadway, New York, August 27, 1875.

We hereby certify that the above and foregoing is a true copy of the minutes of the Board of Directors of said Company, of this date.

(Seal) M. Courtright, President.

J. A. Cowing, Secretary.

Messrs. Scott, Courtright and Dows also submitted to the Board the following communication:

4000 Resolved, That a Committee of the Board, consisting of the President, Milton Courtright, David Dows and William L. Scott, Directors, be and is hereby appointed with full power and authority to represent and act for and on behalf of this Company in all matters connected with the Rapid Transit Commissioners heretofore referred to, and with full power and authority to accept any modification, addition or change, in the route or routes applied for by this Company, or in the conditions, stipulations and agreements embraced in the foregoing Preamble and Resolutions proposed by this Company to said Rapid Transit Commissioners, that said Rapid Transit Commissioners shall require or that said Committee may deem expedient.

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Office of the New York Elevated Railroad Company, August 27th, 1875.

We certify that the above Resolution is a true copy of the minutes of the Board of Directors of said Company, of this date.

(Seal) M. Courtright, President.

J. A. Cowing, Secretary.

4002 Messrs. Foster, Alexander, Lowrey, Navarro, C. K. Garrison and others, of the Gilbert Elevated Railway Company, had a further and protracted hearing as to the routes by that Company proposed, and as to the conditions and requirements to be by the Board imposed if such route is determined.

Upon motion of Mr. Canda, adjourned to September 1, 1875, at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

4003

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Wednesday, September 1, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

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Upon motion of Mr. Brown, the reading of the minutes was dispensed with.

Communications from various persons were received, read, considered, numbered and filed.

Mr. J. B. Cornell, accompanied by his Engineer, Mr. Stimers, had a further hearing and submitted plans of a route different in places from the route by them heretofore proposed.

Mr. Harrison reported that he has employed Stephen P. Nash, Esq., as Special Counsel, and has consulted him upon the questions by the Board recently proposed for opinions.

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Upon motion of Mr. Delamater, the employment of Mr. Nash was approved and ratified.

Messrs. Foster, Navarro, Alexander, Lowrey, Porter and others, accompanied by their Engineer, General Wilson, representing the Gilbert Elevated Railway Company, and Messrs. Scott, Courtright and others, representing the New York Elevated Railroad Company, had further and protracted hearings before the Board upon the subjects heretofore discussed with them respectively; and Messrs. Houston, Derrick, Kirkup and Brandon also attended and explained the plans of construction by them severally advocated.

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Upon motion of Mr. Mott, seconded by Mr. Delamater, it was

Resolved, That the Secretary of this Board be and hereby is directed to communicate with the Gilbert Elevated Railway Company, inclosing the Preamble and Resolutions hereinafter referred to, in respect to the subject-matter of the petition of said Company for determination upon a Rapid Transit route coincident with the present route of said Company; and to request from that Company information for this Board of Commissioners

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whether said Company is legally empowered and is willing, in case such determination should be made, to bind itself, in form satisfactory to this Board of Commissioners, to the performance of each and all the conditions and requirements set forth in the certain Preamble and Resolutions which have been by Counsel prepared and submitted to this Board of Commissioners to be proposed to said Company for adoption; and to request that, in case said Company is so able and willing, it will do so, and will signify such ability and willingness and the fact that said Company has bound itself,

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by the passage and adoption of the said Preamble and Resolutions; and further to request said Company to return the said Preamble and Resolutions, so passed and adopted, to this Board of Commissioners, duly certified over the corporate seal of the Company, attested by the Secretary of the Company, as and for the consideration and basis of such further action as this Board of Commissioners may see fit to take upon the petition of said Company.

Mr. Canda called attention to the fact that the elevation at which the Brooklyn Bridge is to cross William Street makes it impossible to construct an

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elevated railway along that street as has been proposed by the New York Elevated Railroad Company.

Upon motion of Mr. Brown, adjourned to 2d inst., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Thursday, September 2, 1875—12 o'clock M. 4010

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Canda, the reading of the minutes was dispensed with.

Communications were received from various persons, read, considered, numbered and filed—among them one of great interest from Hon. Samuel B. Ruggles. 4011

Mr. Harrison, Counsel to the Board, submitted an opinion in writing, heretofore requested. It was read, ordered to be printed in the minutes, and is as follows:

I am asked by the Board of Commissioners for expression of an opinion in reply to these two questions:

First—Has the Board the power to determine and locate, over or across Broadway and Fifth avenue, below Fifty-ninth street, and over, through or across the places or lands contained in a pub-

lic park, the route or routes by which the New York Elevated Railroad may connect with other steam railways or the depots thereof, or with steam ferries?

Second—Has the Board the power to determine and locate, for the New York Elevated Railroad Company, a route or routes from the southern terminus (at No. 7 Broadway) of the present railway of that company to South Ferry; thence through streets to the Bowery; thence through the Bowery and Third avenue to the Harlem river, and thence
4013 along the Harlem river to connect with the depot of the New York, Boston and Montreal Railroad, which is near the High Bridge?

The statute under which the Commissioners were appointed is chapter 606 of the Laws of 1875, and is entitled "An act further to provide for the construction and operation of a steam railway or railways in counties of the State." It is, as that title indicates, a general law, applicable, in terms, to all parts of the State—to the open country as well as to a city—and it authorizes the construction of railways for the transportation of passengers,
4014 mails and freight; in short, it is a general railroad law.

But the State had already a general railroad law, with provisions authorizing the construction and operation of any railroad of the ordinary kind; under those provisions, many steam railways of the ordinary kind, for transportation of passengers, mails and freight, have been heretofore constructed and are now operated; and as many more as may be desired may hereafter be constructed and operated.

Chapter 606, Laws of 1875, not only does not

purport to be an amendment to that other general railroad law of the State, but, in section 40, there is explicit statement that it does not, in any manner, affect that law, or apply to any of the companies organized for the purpose of constructing or operating a railroad of the ordinary kind. 4015

This new act supplies a want heretofore felt, and to which the general railroad law was inadequate. It is intended especially to provide a general measure for authorizing the construction and operation of steam railways of a peculiar sort for transportation, by what has been called "Rapid Transit," of persons residing in or near any city of the State, from and between their several places of residence and their several places of business in the city, in or near which they reside. That is the real object of the law, and a general law of that nature is a thing new in our legislation—which is of no present interest to any locality in the State other than the cities of New York and Brooklyn. 4016

In the light of that fact, of the difficulties which characterize that particular problem of "Rapid Transit" for persons within the boundaries of those two cities, and of the history of previous attempts by special legislation to accomplish "Rapid Transit" in the city of New York, the provisions of the law in question must be interpreted for the Board which has asked my opinion. 4017

Section 1 of the act provides that, whenever it shall appear, by a prescribed form of application of fifty reputable householders and taxpayers, that there is need of a steam railway or railways wholly within the limits of a city, the Mayor shall appoint "five commissioners * * * who shall have full "power and authority to do and provide all that

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"they are hereinafter directed to do and provide."

Section 4 contains these words:

"§ 4. Said commissioners shall, within thirty days after such organization, determine upon the necessity of such steam railway or railways, and if they find such railway or railways to be necessary in such county, they shall, within sixty days after such organization, fix and determine the route or routes for such steam railway or railways and the said commissioners shall have the exclusive power to locate the route or routes of such

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railway or railways, over, under, through or across the streets, avenues, places or lands in such county, except 'Broadway and Fifth avenue below Fifty-ninth street, and Fourth avenue, above Forty-second street, in the city of New York,' and except such portions of streets and avenues as are legally designated for the main line of or occupied by an elevated or underground railway, in actual operation, and except such as are contined in public parks, or occupied by buildings belonging to such county, or to this State, or to the United States, and except that portion of the city of Buf-

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falo lying between Michigan and Main streets, and to provide for the connection or junction with any other railway or bridge."

Section 6 indicates that there is to be a "com-"pany to be formed for the purpose of construct-"ing, maintaining and operating such railway or "railways;" and the two sections immediately following prescribe the manner in which the Commissioners shall organize "the corporation formed for "the purpose of constructing and operating said "railway or railways."

Throughout many other of the forty-two sections of the law, there is repeated use of the term "such

railway or railways," referring, as it does, when used in section 4, to the particular railway or railways applied for by the fifty householders and found and determined by the Commissioners to be necessary; and each of the railways so referred to is to be constructed and operated by a company —which is to be incorporated, not by any special law, not by the proceedings provided by the general railroad law for incorporating a company to construct an ordinary railroad, but under this particular statute—and which is to be organized by the Commissioners themselves, after proceedings prescribed only by the terms of this statute. The expressions, "company formed under this act," and "such company," are of frequent recurrence. Many of the sections of the act are applicable only to such railways and such corporations—and, as to any one of those companies or of those railways, the powers of the Commissioners are in terms limited, by section 4, in the matter of locating a route over, under, through or across Broadway, Fifth avenue or lands contained in a public park

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But, when section 36 is reached, the [illegible]e deals, and for the first time in terms, with [illegible]me-thing else than a company to be incorporated and organized under the provisions of this particular law—being corporations, already incorporated and organized, for the purposes specially contemplated by this act, to be sure, but having certain peculiar rights and privileges which this act finds them in possession of, and enjoying the same, not under the general railroad law, but by force of special statutes for them severally heretofore enacted. That section is in these words:

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'§ 36. Whenever the route or routes determined upon by said commissioners coincide with the

4024 route or routes covered by the charter of an existing corporation formed for the purpose provided for by this act, provided that said corporation has not forfeited its charter or failed to comply with the provisions thereof, requiring the construction of a road or roads within the time prescribed by its charter, such corporation shall have the like power to construct and operate such railway or railways, upon fulfilment of the requirements and conditions imposed by said commissioners as a corporation specially formed under this act. And
4025 the said commissioners may fix and determine the route or routes by which any elevated steam railway or railways now in actual operation may connect with other steam railways or the depots thereof, or with steam ferries; upon fulfillment by such elevated steam railway company, so far as it relates to such connection, of such of the requirements and conditions imposed by said commissioners under section four of this act, as are necessary to be fulfilled in such cases, under section eighteen of article three of the Constitution of this State, and such connecting elevated railway
4026 shall in such case possess all the powers conferred by section twenty-six of this act; and when any connecting route or routes shall be so designated, such elevated railway company may construct such connection, with all the rights, and with like effect as though the same had been a part of the original route of such railway.'

It is to be observed that the "full power and authority" which, at the beginning of the statute, is given to the Commissioners "to do and provide "all that they are hereinafter directed to do and provide" is, by that section 36, and with regard to the special companies by it contemplated, not

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limited by any prescription whatever—except that it is only by determining upon a route or routes coincident with "the route or routes covered by "the charter of an existing corporation formed for "the purposes provided for by this act," or else by fixing and determining "the route or routes by "which any elevated steam railway or railways, "now in actual operation, may connect with other "steam railways or the depots thereof, or with "steam ferries," that the Commissioners can deal at all with an existing corporation. And the distinction, by section 36 and elsewhere in the act 4028
made, between the case of the special companies by that section contemplated, and the new companies in terms provided for, is so sharply drawn as to make the intention of the Legislature clear to my mind that the limitations, by section 4 prescribed to the powers of the Commissioners, do not apply to the Board when dealing with the case of either of the particular companies by section 36 provided for.

The New York Elevated Railroad Company is within the terms of that section. It has "an elevated steam railway," which now is, and at the 4029
time of the passage of the act was, "in actual operation." And it is my opinion that the Board of Commissioners has the power to determine and locate over or across Broadway and Fifth avenue, below Fifty-ninth street, and over, through or across the places or lands contained in a public park, the route or routes by which that company may connect its railway with other steam railways or the depots thereof, or with steam ferries. I think that the only limitation (other than those stated in section 36) upon the power of the Commissioners, in determining a route or routes for

4030 the New York Elevated Railroad Company, is imposed by section 41 of the act, which in terms applies to "any company," whether "organized under the provisions of this act," or "under any other act heretofore passed;" and that limitation merely prevents construction of "a steam railway upon St. "Nicholas avenue, in the City of New York, or "those streets or avenues in said city commonly "known as boulevards, except to cross the same "under such regulations as shall be imposed by the "Commissioners provided for by this act."

4031 After expression of that opinion, there remains but one point to be considered by me in replying to the second question proposed by the Board.

The route from No. 7 Broadway to the South Ferry is within the law. The question remaining for consideration is, whether the route indicated from there can properly be considered to be one by which the Company "may connect with other "steam railways or the depots thereof, or with "steam ferries." If it is not, the Commissioners have no power under the law to determine it as a route for the New York Elevated Railroad Com-

4032 pany. The special laws enacted particularly for that Company before the passage of this act carefully keep it upon its present line, or give the Company only the streets or avenues to the westward of Ninth avenue in which to vary it. The Legislature, in none of those special laws, indicated an intention to allow that company to construct a line of railway on the east side of the city; and this statute does not authorize the Commissioners to determine a route for that company, upon the east side of the city or elsewhere, as and for a main line on which to conduct a general transportation business. It is only connections with other steam

railways or the depots thereof, or with steam ferries, that the Commissioners can give—and if the route determined for such a connection serves the purposes of a main line for general business, that is an advantage to the company only incidental to the particular purpose of affording a connection of the sort mentioned. The object of the Legislature seems to have been to enable the Company to carry quickly persons desiring to leave the city from their several residences or places of business to a steam conveyance which would enable them to do so—and to distribute, to their several destinations within the city, the persons arriving at the city limits upon one or the other of the steam ferry boats, or brought to the city upon one or another of the existing steam railroads. Traffic from point to point within the city seems to have been provided for only as an incident to performance of the other function.

A line of railway to be constructed through streets in the City of New York, as and for a "connection" between two points—within the common use and meaning of the word "connection," and as the expression is employed in this act—need not be the shortest line between the two points to be connected; though it should be, and would, I think, by the courts be held to be required by this act to be, a line as direct as topographical difficulties and the general scope and intent of this act (construed with recollection of the policy of the Legislature with reference to steam railways in the City of New York, as manifested in the many special acts passed during the last ten years or more) will allow it to be.

There is no steam railway, or depot thereof, and there is but one landing of steam ferry boats, im-

4036 mediately upon the line of either the Bowery or Third Avenue. The depots of several steam railways are, however, within two blocks of Third Avenue; the landings of several of the steam ferries crossing the East river are near the Bowery, and those of others are near Third avenue; and the depot of the Portchester branch of the New York, New Haven and Hartford Railroad is near the Third avenue, at the Harlem river. There is no possible single route which would be a connection with all or several of those ferries and
4037 depots, if that word "connection" is to be construed to allow only the route topographically shortest or most direct. To connect the railway now in actual operation on Greenwich street and Ninth avenue, with all of the depots mentioned, and with each of the ferries on the East river, requires—either a number of branches, starting from as many points on Greenwich street or Ninth avenue and crossing both Broadway and Fifth avenue, and, perhaps, public parks also—or a route or routes from at or near South ferry, and running up the east side of the city as near as may be to
4038 the several ferries and depots, with branches, perhaps, actually to each depot or ferry which can be so reached. It is for the Commissioners in their sound discretion to select between those two plans or systems of connections, or, indeed, as the law does not limit them to one route, to decide whether they will determine for the New York Elevated Railroad Company both those plans or systems of routes. And in so selecting and deciding, the Commissioners will have it in mind that the Legislature, in the act now under consideration—and in all the many special laws for rapid transit in this city, enacted during the last ten years and more

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—has exhibited a policy of prohibition of a route or routes for a rapid transit road over or across Broadway or Fifth avenue, below Fifty-ninth street.

The law allows the Commissioners to determine for the New York Elevated Railroad Company a route or routes by which to connect with each steam railway running into the city, or with the depot thereof, and also a route or routes by which to connect with each steam ferry; and the terms of the act permit a single route of connections to connect several or all of the railways or depots, 4040
and also several or all of the ferries, with the present railway of the New York Elevated Railroad Company.

The law does not prescribe the point or points on the present line of railway at which a connection must be made—through, to accomplish the general object of distribution of persons residing or doing business in or near the city to their places of business during the day, and thence to their several residences at the end of the day, a connection with the present southern terminus of the existing railway of that company seems to be the 4041
most useful.

I am of the opinion that a "connection," for a rapid transit railway in the city, with another railway or the depot thereof, is not intended to be necessarily a connection so intimate as to allow cars to be run from the one track to the other; that there may be fairly said to be a connection for the purposes of this law, if the New York Elevated Railroad Company is brought sufficiently near to the railway or depot of the other company, to allow passengers to pass conveniently and quickly from the one train to the other. Such

4042 reasonable approximation of the cars of the New York Elevated Railroad Company to a ferry, as will enable passengers to pass readily and quickly between them and the ferry boat, is as close a connection as can be made between a railroad and such a steamboat.

I have no doubt that if short branches are run from a railway on the Bowery or the Third avenue to the depots and ferries, as the route passes near them, the connection so made will be within the intent and object of the law.

4043 And, if it should be held by the Courts that, in the opinion by me above expressed in reply to the first of the questions proposed, I am incorrect, and that the Board has no power to fix and determine a route across Broadway and Fifth avenue, below Fifty-ninth street, it will be observed that, to give effect to the intention of the law that the New York Elevated Railroad Company shall have connections with the steam ferries and railway depots which can be reached by the route indicated in the second question, it must be held that you have the power to fix and determine that route as

4044 a line of connection with those ferries and railways.

For, though the act does not, in express terms, forbid the Board to locate a route across Broadway and Fifth avenue, at Fifty-ninth Street, it would not be claimed that the intention of the Legislature was to permit, at that street, a route forbidden below there. And if the crossing cannot be made below the Central Park, it cannot be made below One Hundred and Tenth Street, because the prohibition (if any) is the same as to crossing the Park as to crossing Broadway.

It would have, therefore, to be held that the

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only possible line of connection for the New York Elevated Railroad with the Forty-second street depot, and with the East-side ferries below or near Forty-second street, is around the lower end of Broadway, at or below the Bowling Green, where Broadway ends.

New York, August 31, 1875.

Burton N. Harrison.

Mr. Harrison also submitted the opinion of Stephen P. Nash, Esq., Special Counsel, upon the same points. It was read, ordered to be printed in the minutes, and is as follows:

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The following questions have arisen in the Board of Commissioners appointed by the Mayor of New York, under chap. 606 of the Laws of 1875, in respect to which my opinion is requested:

First.—Has the Board the power to determine and locate over or across Broadway and Fifth avenue, below Fifty-ninth street, and over, through or across the places or lands contained in a public park, the route or routes by which the New York Elevated Railroad may connect with other steam railways, or the depots thereof, or with steam ferries.

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Second.—Has the Board the power to determine and locate, for the New York Elevated Railroad Company, a route or routes from the southern terminus (at No. 7 Broadway) of the present railway of that company to the South Ferry, thence through streets to the Bowery, thence through the Bowery and Third avenue to the Harlem river, and thence along the Harlem river to connect with the depot of the New York, Boston and Montreal Railroad, which is near the High Bridge.

4048 The difficulty in reference to the first question arises under sections 4 and 36 of the act. Section 4, in declaring and defining the powers of the Commissioners, provides that they shall have the exclusive power to locate the route or routes over, under, through, or across the streets, avenues, places, or lands, in the city, "except Broadway and Fifth avenue below Fifty-ninth street," and except the lands contained in public parks. This broad exception protects Broadway and the parks, as the Commissioners have no powers beyond those con-

4049 ferred by the act.

But it is contended that, under section 36, the powers of the Commissioners are absolute, not restricted by these exceptions contained in section 4. Section 36 provides that the Commissioners "may fix and determine the route or routes by which any elevated steam railway or railways, now in actual operation, may connect with other steam railways or the depots thereof, or with steam ferries * * * and when any connecting route or routes shall be so designated, such elevated railway company may construct such con-

4050 nection, with all the rights and and with like effect as though the same had been a part of the original route of such railway."

A line from Ninth avenue through Forty-second street, eastward to the depot of the N. Y. Central and Hudson River Railroad, would be a direct connection under this provision, but such line would cross Broadway and Fifth avenue below Fifty-ninth street. There is much force in the view that the Commissioners may, under this section, authorize such a connection, but I am unable to yield to it. It is hardly creditable to the Legislature to suppose that, while giving to the Commissioners

the large powers conferred by the act, it would have tied their hands so completely in reference to Broadway and the Parks, so long as they were dealing with the whole subject of Rapid Transit by new routes, and yet have left them entirely free to permit an existing corporation, limited, as the New York Elevated Railroad Company is, by its chartered powers, to a line west of Ninth avenue, to cross Broadway and any of the public squares or parks with its tracks whenever a connection with a ferry or depot might be desirable. Although the restriction in respect to Broadway and the parks is not repeated in section 36, I think the powers exercised by the Commissioners under that section must be subject to the general restrictions of section 4.

The scheme of the act is to submit to the determination of the Commissioners in the first instance the necessity of any steam railways of the character contemplated by the act. This being affirmatively determined, "all such railways," whether upon new routes or upon routes, already appropriated by existing companies, whether on independent lines or in connection with existing roads, are the railways in respect to which the powers of the Commissioners are to be exercised. If upon new routes, the roads may be built by corporations, to be organized under the act; but if the routes coincide with those of existing corporations, or may be most conveniently established in connection with roads already running, then, under section 36, the organization of new corporations is dispensed with, but the general restriction upon the powers of the Commissioners, in respect to Broadway, Fifth avenue and the parks, remains, I think, in full force.

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But this view makes it necessary to give some reasonable interpretation to that part of section 36, which authorizes the Commissioners to fix and determine the route or routes by which any elevated steam railway (in other words, the New York Elevated Railroad, as the only one in operation when the act was passed) may connect with other steam railways, or the depots thereof, or with steam ferries. The line of this company ran near all the ferries on the west side; it already connected with the old Hudson River depot, and it

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had the right to run northward to the Harlem river. No additional right of connection on the west side was important to this company, or to the public. The connections, therefore, contemplated by section 36, would seem to be connections which, when established, would subserve the general purpose for which the act was passed, which was to secure what has been called rapid transit. The want in this particular is principally the carriage of persons up and down town. The needs of cross-town transit are of less importance, if convenient access be given to main lines running longitudinally each side of Broadway. As-

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suming that the line of the New York Elevated Railroad can be made to answer the needs on the west side, and that the route prescribed in the second question be determined on by the Commissioners for a line on the east side, the point presented by that question is, whether the authority to construct a road on such east side route can be given to the New York Elevated Railroad Com[illegible], as a connecting route, under section 36.

Of course, consistently with the views already expressed, the connection must be made without crossing Broadway below Fifty-ninth street, and

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I am informed that it can be made by turning Broadway as its southerly end. If this route can be awarded to the New York Eleated Railroad Company, full operation is given to the provisions of section 36 which relate to that company. In this light, I repeat those provisions: "and the said Commissioners may fix and determine the route or routes by which any elevated steam railway or railways now in actual operation may connect with other steam railways or the depots thereof, or with steam ferries; and when any connecting route or routes shall be so designated, such elevated railway company may construct such connection, with all the rights, and with the like effect as though the same had been a part of the original route of such railway."

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It is clear from this broad language that the Commissioners are not at all bound to prefer the plan of securing rapid transit through new corporations organized under the act. They are quite free to deal with existing corporations which can be made to answer the purpose. Nor is there any reason to suppose that the connecting routes mentioned in the section should be confined to merely subsidiary routes. One main line may be connected with another main line, and each is a connecting route in respect to the other. It is for the Commissioners to provide how the lines shall be connected, in respect to the cars running from the original to the new or connecting road without break; but to meet the requirements of the law all that is necessary is that the connecting road shall run to a steam ferry, or some railroad depot.

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My conclusion in reference to the questions proposed is that the Commissioners can lay out no route across Broadway or the parks below Fifty-ninth street, but that they have the power to de-

4060 termine and locate, for the New York Elevated Railroad Company, the route described in the second question, provided that route can be connected with the railway of said company without violating the restriction upon the Commissioners as to crossing Broadway and the parks below Fifty-ninth street contained in section 4 of the act.

New York, Sept. 2, 1875.

S. P. Nash.

The Secretary reported that, in compliance with
4061 the directions of the Board at the last meeting, he yesterday addressed to the Gilbert Elevated Railway Company a communication, as follows, enclosing the papers in it referred to:

Office of the Board of Commissioners of Rapid Transit, New York, September 1, 1875.

To the President and Directors of the Gilbert Elevated Railway Company:

Sirs:—Enclosed please find copy Resolution this day adopted by the Board of Commissioners, appointed by the Mayor under the provisions of
4062 chapter 606, Laws of 1875, and copy of the Preamble and Resolutions therein referred to.

The requests in the said Resolution of the Board of Commissioners directed to be made of the Gilbert Elevated Railway Company, are hereby made, and a prompt reply is desired.

Very respectfully, Your obedient servant, Burton N. Harrison, Acting as Secretary,

Messrs. Alexander, Garrison, Navarro, Lowrey, Foster, Porter, Wilson and others, representing the Gilbert Elevated Railway Company, and Messrs. Scott, Courtright, and others, representing the

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New York Elevated Railroad Company, appeared before the Board, and each had a further hearing as to routes by him advocated.

Mr. Foster submitted to the Board an authenticated copy of a Preamble and Resolutions adopted by the Gilbert Elevated Railway Company, by the Board of Directors, at a meeting held today, as follows:

At a meeting of the Board of Directors of the Gilbert Elevated Railway Company, held at the office of the Company, at No. 149 Broadway, in the City of New York, on the second day of September, 1875. 4064

Present—William Foster, Jr., President, Noah C. Pratt, Director, Daniel C. Scannell, Director, James Clyne, Director, George R. Cullingworth, Director, Charles H. Clayton, Director.

The following Preamble and Resolutions were offered by James Clyne, seconded by Daniel C. Scannell, and were adopted by the following vote, to wit:

In favor thereof—William Foster, Jr., Noah C. Pratt, Daniel C. Scannell, James Clyne, George R. Cullingworth, Charles H. Clayton. 4065

No one voting in the negative.

Whereas, This Company did, heretofore, on the twenty-sixth day of July, 1875, address a communication to the Board of Commissioners, organized under chapter 606 of the Laws of 1875, requesting said Board, acting under the powers granted by said act, to locate a railway route in the City of New York, coincident with the route of this Company, and engaging to submit to such conditions and requirements in respect to structure or

4066 otherwise, as might be imposed by said Board of Commissioners;

And whereas, Said Board of Commissioners has, through its Secretary, addressed to William Foster, Jr., President of the Gilbert Elevated Railway Company, a communication covering certain resolutions offered for consideration and adoption by this Company as the consideration and basis of further action of said Board of Commissioners—all of which communications have been laid before this Board of Directors, by its President, and con-
4067 sidered; and this Board of Directors, deeming itself and being advised that it is authorized and empowered, on behalf of this Company, to accept and perform, and to bind itself in future to perform and carry out all the conditions and requirements set forth or mentioned in the resolutions, and deeming it for the best interest of this Company, that it should become so bound, and that the preamble and resolutions should be adopted and become binding in full upon this Company;

Resolved, That the following preamble and resolutions be and hereby are passed and adopted, and
4068 that the Secretary be and he is hereby authorized and instructed to enter the same upon the minutes of this Board of Directors, and to transmit a full copy of said minutes of the proceedings of this day, duly certified, to Burton N. Harrison, Secretary of the Board of Commissioners:

Whereas, The Board of Commissioners appointed by the Mayor of the City of New York, under the terms and provisions of chapter 606, Laws of 1875, has required of this Company certain stipulations and agreements, by this Company to be made and agreed to, as a condition prece-

dent to fixing and determining the route or routes which shall coincide with the route or routes covered by the Charter of this Company, such stipulations and agreements to be by this Company fulfilled and performed, and the same to be the consideration for and upon which said Board of Commissioners will fix and determine such route or routes, now, therefore,

Resolved, That, for and in consideration of the fixing and determination, by said Board of Commissioners of a route or routes coincident with the route or routes covered by the Charter of this Corporation, and for and upon other valuable considerations this company thereto moving, this company hereby stipulates, covenants, contracts and agree, to and with said Board of Commissioners, as follows: 4070

First.—That this Company shall and will construct and complete its railway, as follows, subject only to the proviso hereinafter stated as to time of completion;

1st. Over and along so much of the route as shall be, by said Board of Commissioners, fixed and determined from Forty-second street towards the southern end of the city, not less than three miles, on either side of the city as may be elected by this Company, running south from Forty-second street—within ten months from the 1st day of October, 1875; 4071

2d. Over and along so much of the route as shall be by said Board of Commissioners fixed and determined over and along and coincident with the other portions of the route or routes covered by the Charter of this Company—at the rate of not

4072 less than five miles in every twelve months after the expiration of the ten months above limited and beginning immeditely upon the expiration of said ten months, until the entire railway shall be completed.

The proviso hereinbefore referred to as to time of completion of said several sections or portions of railroad, is this, as follows: that the time, if any, unavoidably consumed by the pendency of legal proceedings or by the interference of the public authorities or by the neglect of the public au-

4073 thorities to grade those portions of Ninth avenue or of One Hundred and Tenth street not now graded, shall not be deemed a part of any period of the time within which completion of the railroad is hereby stipulated, covenanted, contracted and agreed to be made. But it is distinctly understood and agreed by said Board of Commissioners and by this Company, that the time, if any, during which such unavoidable delay shall continue, shall be added to each of the periods hereby otherwise limited for construction and completion of the railway.

4074 Second.—That this Company accepts, and shall and will be governed by, and shall and will charge and collect rates of fares only as follows—the same being the rates of fares by the charter of this Company authorized to be charged and collected, as modified by said Board of Commissioners and fixed and allowed to be by this Company collected, as follows:

1st. Upon trains and in cars other than those hereinafter called "commission trains" or "cars," for all distances on the east side of the city, not exceeding five miles, not to exceed ten cents, and

not to exceed two cents per mile for each mile or fraction of a mile in excess of a mile over five miles, until the fare shall amount for a through passenger, on the east side of the city, from and between the southern terminus of the railway or any point north thereof and the Harlem river, to not to exceed fifteen cents, and from and between the southern terminus of the railway or any point to the north thereof and the High Bridge, to not to exceed seventeen cents—which said sum of fifteen cents shall be the maximum charge as fare for a through passenger to or from Harlem Bridge 4076
—and which said sum of seventeen cents shall be the maximum charge as fare for a through passenger to or from the High Bridge. In this connection, it is understood and agreed, that, for the entire distance on the East side of the city from and between the southern terminus of the railway and East Fifty-ninth street, or from and between the southern terminus of the railway and West Fifty-ninth street, the fare shall not exceed ten cents per passenger.

2d. Upon special trains or cars, to be run over the entire length of the railway on the east side 4077
of the city, and over the portion of the railway on the west side of the city from and between West Fifty-ninth street and the southern terminus, for the accommodation of the laboring classes and of the public (and which special trains and cars shall be known and designated as "Commission trains" and "Commission cars"), from 5.30 o'clock A. M. to and until 7.30 o'clock A. M., and from 5 o'clock P. M. to and until 7 o'clock P .M., not exceeding one-half the rates of fares above limited—the distance between the southern terminus of the railway and East Fifty-ninth street, and that between

4078 the southern terminus of the railway and West Fifty-ninth street being taken always as, for the purpose of charging and collecting fares, to be not exceeding five miles, and the maximum rate of fare to be charged to and collected from a through passenger on a "Commission train" or in a "Commission car," from and between the southern terminus of the railway, or any point to the north thereof, and the northern terminus of the railway, to be not to exceed seven cents to or from the Harlem Bridge, and not to exceed eight cents to
4079 or from the High Bridge. It is however, hereby understood and agreed, by and between the said Board of Commissioners and this Company, that, as a part of any train run over any portion of the route or routes so determined by the railway of this Company, there may be one or more cars of the kind known as "Saloon cars" or "Drawing-room cars," with special arrangements for extra comfort and space for the passenger; and that there may be demanded, charged to, and collected from each person who shall ride in such a "Saloon car" or "Drawing-room car" an extra (though not
4080 unreasonable) rate of fare in addition to the rates hereinbefore mentioned. It is, however, further understood and agreed by and between said Board of Commissioners and this Company, that, as a part of each and every train, there shall be cars, other than "Saloon cars" or "Drawing-room cars," sufficient to accommodate all persons who do not prefer to ride in "Saloon cars" or "Drawing-room cars," and who are not willing to pay the extra rate of fare for special arrangements for extra comfort and space; and that if and whenever there is not accommodation provided in the train, on such other cars, for each and all the passengers

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desiring to travel in them, that then, in that case only, any passenger who may take a seat in a "Saloon car" or "Drawing-room car" shall be entitled to occupy the same without payment of the extra rate of fare otherwise allowed to be charged in such "Saloon car" or "Drawing-room car." And as it is possible that some portions of the lines of railways in this city may be operated by one company, and other portions be operated by another company, it is further provided and hereby stipulated, covenanted, contracted and agreed that, if and whenever this company shall operate either 4082
portion thereof, it shall and will make connections, and shall and will carry passengers upon all portions of its lines, for such pro rata share of the prices above fixed and limited as it shall be entitled to by its pro rata of mileage, and that it shall and will exchange cars with the other company, as is ~~custo~~mary among railroad companies, for the convenience of the public.

Third.—That this Company shall and will run, daily, special trains or cars (to be known and designated as "Commission trains" and "Commission cars"), in numbers sufficient amply to accommo- 4083
date the travel, and at intervals really to accommodate the laboring classes, beginning at 5.30 o'clock A. M., to and until 7.30 o'clock A. M., and again beginning at 5 o'clock P. M. to and until 7 o'clock P. M.—such trains to be run from and between the southern terminus of the railway and the High Bridge, on the east side of the city, to stop regularly at the usual stations of the Company, and to run at the rate of speed of the other local trains of the Company—except that certain of such "Commission trains" may be through trains, from and between the Battery and Harlem Bridge or High

4084 Bridge, at a rate of speed faster than that of the other "Commission trains," if such faster "Commission trains" shall be found to be necessary to accommodate the laboring classes. In this connection it is understood, however, that it shall not be necessary to devote an entire train to the purposes of a "Commission train" as above provided for, but that the object of this Third paragraph shall be considered to be accomplished if special cars ("Commission Cars,") in numbers sufficient to meet the demand of persons desiring to travel in
4085 them shall be provided for the laboring classes and others, and attached to trains running during the hours above indicated, in which special cars ("Commission Cars") only the lower rates of fares above specified shall be charged.

Fourth.—That, in the construction of the Railway of this Company, the structure shall be an Elevated double track iron Railway, to be constructed in all substantial respects in accordance with plans and specifications to be made and agreed to by the President of this Company and the said Board of Commissioners, with the privi-
4086 lege, however, to this Company to have, and with provision for hereafter having, three tracks of railway, along and upon the portions of the route upon which this Company may hereafter, and from time to time, think it desirable to construct a third track. But it is understood and agreed, by and between said Board of Commissioners and this Company, that, upon that portion of the route over, along and through, River street, from and between Harlem Bridge and Kings Bridge, along the line of the Harlem river, the structure of the railway to be there constructed may be built upon or near the surface, upon piles or otherwise, in such man-

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ner as this Company may find desirable and most convenient—the said structure to be there changed to an Elevated railway, if and whenever, and as soon as, by the public authorities having jurisdiction in the matter, the Company shall be required to do so, after the said River street shall be opened and filled in as a street.

Fifth.—That this Company shall and will, upon demand by said Board of Commissioners, pay over, to and for the use of said Board, such fair and reasonable proportion of the expenses, etc., of said Board as by the said Board may be allotted to be by this Company paid.

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Sixth.—That the President and Treasurer of this Company are hereby authorized and directed to make, execute and deliver in the name and under the Corporate seal of this Company, such indenture and indentures, and each, every and all such other paper and papers, as and whenever, from time to time, by the said Board of Commissioners or by their Counsel learned in the law, shall be required or demanded, the better to express and secure performance of the stipulations, covenants, contracts and agreements, and each and every of them, hereinbefore stated or intended by this Company to be made—one of such indentures, in the name and over the Corporate seal of this Company, to be the bond and obligation of this Company to "the Mayor, Aldermen, and commonalty of the City of New York," or to "the People of the State of New York," or to such other obligee, or obligees, as said Board of Commissioners shall by Counsel be advised to prefer, and as said Board of Commissioners shall indicate—such bond and obligation to be in the penal sum of two hundred

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4090 and fifty thousand dollars ($250,000), with such sureties as may by this Company be procured and by said Board of Commissioners may be found satisfactory, and conditioned that the said stipulations, covenants, contracts and agreements, and each and every of them, hereinbefore stated or intended by this Company to be made, shall and will be in good faith, fully and as hereinbefore expressed or intended fulfilled and performed.

Office of the Gilbert Elevated Railway Company, No. 149 Broadway, New York, September 2nd,
4091 1875.

I have compared the foregoing with the original proceedings of the Board of Directors of the Gilbert Elevated Railway Company, at a meeting of said Board, duly held at the office of said Company, on the second day of September, 1875, as the same duly appear duly recorded in their proper places in the records of the proceedings of said Board, and hereby certify the same to be a full, true and perfect transcript of said original and of the whole thereof.

4092 In testimony whereof I have hereunto set my hand and affixed the corporate seal of said Company, the day and year first above written.

Charles H. Clayton, Secretary. (Seal.)

Upon motion of Mr. Canda, seconded by Mr. Brown, the following Preamble and Resolutions were unanimously adopted:

Whereas, The New York Elevated Railroad Company, by its Board of Directors in meeting duly convened, has taken proceedings and adopted a preamble and resolutions which appear in a communication from said Company to this

Board of Commissioners addressed, and in terms as follows: 4093

"Whereas, the Board of Commissioners appointed by the Mayor of the City of New York, under the terms and provisions of chapter 606 of Laws of 1875, has required of this Company certain stipulations and agreements by this Company to be made and agreed to as a condition precedent to fixing and determining the route or routes by which the railway of this Company may connect with other steam railways or the depots thereof, or with steam ferries, such stipulations and agreements to be by this Company fulfilled and performed and the same to be the consideration for and upon which said Board of Commissioners will fix and determine such route or routes, now therefore, 4094

"Resolved, That, for and in consideration of the fixing and determination by said Board of Commissioners of the route or routes by which the railway of this Company may connect with other steam railways or the depots thereof, or with steam ferries, such route or routes to be substantially as heretofore by this Company applied for and designated, or such as this Company shall accept in lieu thereof, and for and upon other valuable considerations this Company thereto moving, this Company hereby stipulates, covenants, contracts and agrees with and to said Board of Commissioners, as follows: 4095

"First.—That this Company shall and will construct and complete its railway as follows, subject only to the proviso hereinafter stated as to time of completion:

"1st. Over and along so much of the route as

4096 shall be by said Board of Commissioners fixed and determined; from the intersection of Greenwich street and Battery place, across Battery place, through the Battery and State street to Whitehall street to connect with the South, Hamilton avenue and Staten Island Ferries; thence across Whitehall street to Front street; thence through and along Front street to Broad street; thence through and along Broad street to South William street; thence through and along South William street to John street; thence through and along John street
4097 to Burling slip to and across South street to connect with the Fulton Ferry, East river; also from the intersection of John street and William street, through and along William street and North William street to Chatham street; thence through and along Chatham street to Chatham square; thence across Chatham square to the Bowery; thence through and along the Bowery to Third avenue; thence through and along Third avenue to East Thirty-fourth street; thence through and along East Thirty-fourth street to and across Avenue A, to and connecting with the Thirty-fourth Street
4098 and Hunter's Point Ferry, East river; also from the intersection of East Thirty-fourth street and Third avenue, through and along Third avenue to East Forty-second street; thence through and along East Forty-second street to and across Fourth avenue to and connecting with the depot known as the Grand Central Depot, occupied by the New York Central and Hudson River, New York and Harlem, and the New York, New Haven and Hartford Railroad Companies; also, from the intersection of East Forty-second street and Third avenue, through and along Third avenue to

East Fifty-ninth street—before or by the 1st day of September, 1876. 4099

"2d. Over and along so much of the route as shall be by said Board of Commissioners fixed and determined, from Fifty-ninth street over and along Third avenue to the intersection of One Hundred and Twenty-fifth street; thence through One Hundred and Twenty-fifth street to First avenue; thence through First avenue to and across the Harlem river, to the depot of the Harlem river and Portchester branch of the New York, New Haven and Hartford Railroad Company; also 4100 from the intersection of One Hundred and Twenty-fifth street and Third avenue to One Hundred and Twenty-ninth street, and thence through One Hundred and Twenty ninth street to Lexington avenue; thence through Lexington avenue to River street, on the Harlem river—on or before the 1st day of June, 1877.

"3d. Over and along so much of the route as shall be by said Board of Commissioners fixed and determined, through and along River street to the High Bridge, and across the Harlem river, to connect with the New York, Boston and Montreal 4101 Railroad or the depot thereof—on or before June 1st, 1878.

"4th. Over and along so much of the route as shall be by said Board of Commissioners fixed and determined, from the intersection of Ninth avenue and West Eighty-sixth street, over and along West Eighty-sixth street to Eighth avenue; thence over and along Eighth avenue to the New York, Boston and Montreal Railroad or the depot thereof—before or by the 1st day of June, 1878.

"The proviso hereinbefore referred to as to time

4102 of completion of said several sections or portions of railroad is this, as follows: that the time, if any, unavoidably consumed by the pendency of legal proceedings, or by the interference of the public authorities, shall not be deemed a part of any period of the time within which completion of the railroad is hereby stipulated, covenanted, contracted and agreed to be made. But it is distinctly understood and agreed, by said Board of Commissioners, and by this Company, that the time, if any, during which such unavoidable delay shall 4103 continue shall be added to each of the periods hereby otherwise limited for construction and completion of the railway.

"Second.—That this Company accepts and will be governed by, and will charge and collect rates of fares upon such connections only as follows: the same being the rates of fares by said Board of Commissioners fixed and allowed to be by this Company upon such connections collected—as follows:

"1st. Upon trains and in cars other than those 4101 designated as Commission trains and cars: for all distances under five miles not to exceed ten cents, and not to exceed two cents per mile for each mile or fraction of a mile in excess of a mile over five miles until the fare shall amount to not to exceed fifteen cents for a through passenger from and between the Battery and the intersection of Third avenue and One Hundred and Twenty-ninth street, and from and between the Battery and High Bridge not to exceed seventeen cents for a through passenger. And in this connection it is understood and agreed that, for the entire distance from and between the Battery and Fifty-

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ninth street the fare shall not exceed ten cents per passenger.

"2d. Upon what are hereinafter designated as Commission cars or trains, to be run on the East side of the City for the accommodation of the public and laboring classes from 5.30 o'clock A. M., to and until 7.30 o'clock A. M., and from 5 o'clock P. M. to and until 7 o'clock P. M.: the rate of fare shall not exceed five cents from and between the Battery and Fifty-ninth street, or for any distance between said points; and shall not exceed five cents for any distance not exceeding five miles; and shall not exceed seven cents for a through passenger from and between the Battery, or any point north thereof, and the Harlem river; and shall not exceed eight cents for a through passenger on any of said Commission trains or cars from and between the Battery and High Bridge.

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"This Company hereby further agrees and binds itself that, when the net income of the road, after all expenditures, taxes and charges are paid, shall amount to a sum sufficient to pay exceeding ten per cent. per annum on the capital stock of the Company, that in that case and within six months thereafter, and so long as said net earnings amount to a sum sufficient to pay more than ten per cent. as aforesaid, this Company shall and will run Commission Trains or Cars on all its roads at all hours during which said road is operated, at the rates of fare hereby stipulated for the laboring classes and public on said Commission trains or cars.

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"It is, however, hereby understand and agreed by and between the said Board of Commissioners and this Company, that, as a part of any train of cars run over any portion of the route or routes

4108 of connections of the railway of this Company, there may be one or more of the kind known as 'Saloon cars' or 'Drawing-room cars,' with special arrangements for extra comfort and space, and that there may be demanded, charged to, and collected from each person, who shall ride in such a 'Saloon car' or 'Drawing-room car,' an extra (though not unreasonable) rate of fare, in addition to the rates hereinbefore mentioned. It is, however, further understood and agreed by and between said Board of Commissioners and this
4109 Company, that, as a part of each and every train, there shall be cars other than 'Saloon cars' or 'Drawing-room cars,' sufficient to accommodate all persons who do not prefer to ride in 'Saloon cars' or 'Drawing-room cars,' and who are not willing to pay the extra rate of fare for special arrangements for extra comfort and space; and that, if and whenever there is not accommodation provided in the train on such other cars for each and all the passengers desiring to travel in them, that then, and in that case only, any passenger who may take a seat in a 'Saloon car' or 'Draw-
4110 ing-room car' shall be entitled to occupy the same without payment of the extra rate of fare otherwise allowed to be charged in such 'Saloon car' or 'Drawing-room car.'

"Third.—That this Company shall and will run daily between the hours of 5:30 and 7:30 A. M. and 5 and 7 o'clock P. M., special cars or trains, to be known and designated as Commission Cars or Trains, in numbers sufficient to accommodate the public and laboring classes; such trains or cars to be run, on the east side of the city, from and between the Battery and the northern terminus of the route at Harlem river—the same to

stop regularly at all the regular stations of the Company, and to be run at the rate of speed of the other local trains. 4111

"In this connection it is understood, however, that it shall not be necessary to devote an entire train to the purposes of a 'Commission Train,' as above provided for, but that the object of this Third paragraph shall be considered to be accomplished if Commission cars, in numbers sufficient to meet the demand of persons desiring to travel in them, shall be provided for the public and the laboring classes and attached to trains running during the hours above indicated—in which Commission cars, only the lower rates of fare above specified shall be charged. 4112

"Fourth.—That in the construction of that section or portion of the railway over and along so much of such route or connections as extends from the Battery to the intersection of William street and Chatham street on the east side of the city, the structure shall be of and for a double track; and from the intersection of William and Chatham streets through Chatham street, the Bowery and Third avenue to East One Hundred and Twenty-ninth street, the structure shall be for three tracks; and the portions of the railway mentioned, including the portions from the intersection of Third avenue and East One Hundred and Twenty-fifth street, through East One Hundred and Twenty-fifth street to First avenue, and through First avenue to and across River street to the Harlem river, and from the intersection of Third avenue and East One Hundred and Twenty-ninth street through East One Hundred and Twenty-ninth street to Lexington avenue, through Lex- 4113

4114 ington avenue to River street on the Harlem river, and along River street to and across Fourth avenue, shall be of such plan, style of construction and material, and of such location as shall be approved by said Board of Commissioners and the Commissioners of this Company; and that that portion of the road on and along River street, west of Fourth avenue, shall be a surface road until River street is graded, and until this Company is required by the city authorities to make an elevated road on and along said street of sim-

4115 ilar structure to the other portions of the road.

"And that, in the construction of that section or portion of the railway, over and along so much of such route of connections as extends from Ninth avenue, over and along West Eighty-sixth street to Eighth avenue, and thence along Eighth avenue to the New York, Boston and Montreal Railroad, or the depot thereof, on the west side of the city, the structure shall be of and for a single track railway, of such plan, style of construction and material, and of such location, as shall be approved by said Board of Commissioners

4116 and by the Commissioners of this Company, with the privilege to this Company to have, over and along said section or portion of the route, a double track railway, whenever this Company shall desire to have a double track there; and with the understanding and agreement between said Board of Commissioners and this Company, that this Company shall and will construct a double track railway, over and along said section or portion of the route, whenever and as soon as the number of passengers, in any one year carried upon said section or portion of the route, shall amount to fifteen millions.

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"Fifth.—That this Company shall and will upon demand by said Board of Commissioners, pay over to and for the use of said Board, such fair and reasonable proportion of the expenses, etc., of said Board as by the said Board may be allotted to be by this Company paid.

"Sixth.—That the President and Treasurer of this Company are hereby authorized and directed to make, execute and deliver, in the name and under the corporate seal of this Company, such indenture and indentures, and each, every, and all such other paper and papers as and whenever, from time to time, by the said Board of Commissioners, or by their counsel learned in the law, shall be required or demanded, the better to express and secure performance of the stipulations, covenants, contracts and agreements, and each and every of them hereinbefore stated or intended by this Company to be made; one of such indentures, in the name and over the corporate seal of this Company, to be the bond and obligation of this Company to the 'the Mayor, Aldermen and Commonalty of the City of New York,' or to 'the People of the State of New York,' or to such other obligee or obligees as said Board of Commissioners shall by counsel be advised to prefer, and as said Board of Commissioners shall indicate—such bond and obligation to be in the penal sum of two hundred and fifty thousand ($250,000) dollars, with such sureties as may by this Company be procured and by said Board of Commissioners be found satisfactory, and conditioned that the said stipulations, covenants, contracts and agreements, and each and every of them, hereinbefore stated or intended by this Company to be made, shall and will

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4120 be in good faith, fully and as hereinbefore expressed or intended, fulfilled and performed."

And Whereas, The said the New York Elevated Railroad Company, by Messrs. Milton Courtright, David Dows and William L. Scott, a Committee of the Board of Directors thereto duly authorized, has assented to and accepted the modification, addition or change hereinbelow provided for in the route or routes applied for by said Company, and in the conditions, stipulations and agreements in the foregoing preamble and resolutions proposed
4121 by said Company.

Now, therefore, in consideration of said, the stipulations, covenants, contracts and agreements of the said the New York Elevated Railroad Company, and in reliance upon and consideration of the fulfillment and performance by the said the New York Elevated Railroad Company, its successors and assigns, of said stipulations, covenants, contracts and agreements, each and every of them, it is hereby, by this Board of Commissioners;

Resolved, That, in pursuance of the powers and authority conferred upon us by chapter 606, Laws
4122 of 1875, we do hereby fix and determine the route or routes by which the New York Elevated Railroad, an elevated steam railway, now and at the time said law was enacted in actual operation, may connect with other steam railways or the depots thereof, and with steam ferries, as follows:

Beginning at the intersection of Greenwich street and Battery place, to, over and across Battery place to the edge of the Battery and State street; thence over, through and along the edge of the Battery and State street to Whitehall street; thence over, through and along Whitehall street to and con-

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necting with the South Ferry, Hamilton Avenue Ferry, and Staten Island Ferry; and from the intersection of State street and Whitehall street over and across Whitehall street to Front street; thence over, through and along Front street to Coenties slip; thence over, through, along and across Coenties slip to the intersection of Coenties slip and Pearl street; thence over, through and along Pearl street to Hanover square; thence over, through and along Hanover square and Pearl street to John street; thence over, through and along John street and Burling slip to, over, along and across South street to and connecting with the Fulton ferry; and from the intersection of John street and Pearl street, crossing John street over, through and along Pearl street and Franklin square to New Bowery; thence over, through and along New Bowery and Chatham square to the Bowery; thence over, through and along the Bowery to Third avenue; thence over, through and along Third avenue to East Thirty-fourth street; thence over, through and along East Thirty-fourth street to and connecting with the Thirty-fourth Street Ferry; and from the intersection of East Thirty-fourth street and Third avenue, crossing East Thirty-fourth street, over, through and along Third avenue to East Forty-second street; thence over, through and along East Forty-second street to and across Fourth avenue to and connecting with the depot, known as the "Grand Central," occupied by the New York Central and Hudson River Railroad Company, the New York and Harlem Railroad Company, and the New York, New Haven and Hartford Railroad Company; and from the intersection of East Forty-second street and Third avenue, crossing East

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4126 Forty-second street, through, over and along Third avenue to East Ninety-second street; thence over, through and along East Ninety-second street to, and connecting with the Astoria Ferry; and from the intersection of Third avenue and East Ninety-second street, crossing East Ninety-second street, over, through and along Third avenue to East One Hundred and Twenty-ninth street (there connecting with the ferries having landings at or near Harlem bridge); thence over, through and along East One Hundred and Twenty-ninth street to the
4127 intersection of East One Hundred and Twenty-ninth street and the Harlem river, over and along the Harlem river to First avenue; thence over and across the Harlem river, connecting with the depot of the Portchester branch of the New York, New Haven and Hartford Railroad; and from the intersection of Third avenue and East One Hundred and Twenty-ninth street, over and across Third avenue, and over, through and along East One Hundred and Twenty-ninth street to Lexington avenue; thence over, through and along Lexington avenue to River street and the Harlem river; thence over, through and along River street
4128 and the southerly shore of the Harlem river to, and connecting with, the railway of the New York and Harlem Railroad at Fourth avenue. With a branch and turn-out from the intersection of New Bowery and Chatham square, over, through and along Chatham square to Chatham street; thence over, through and along Chatham street to Park row; thence over, through and along Park row to Tryon row (there to connect with the railway to be laid over the East River Bridge for cars to be operated or propelled by steam); thence over, through and along, or in front of and

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around, Tryon row to the Park; thence along the Park and over, through and along Centre street to Park street; thence over, through and along Park street to Mott street, crossing over Mott street; thence over and through the block to Doyer street, crossing over Doyer street; thence over and through the block to Pell street, crossing over Pell street, over, through and along Pell street, and intersecting the route hereinbefore fixed and determined over, through and along the Bowery. And with a siding for a turn-around, commencing at the intersection of Coenties slip and Water street; 4130
thence over, through and along Water street to Whitehall street; thence over, through and along Whitehall street to and intersecting the route hereinbefore fixed and determined at the intersection of Front street and Whitehall street. And also a route of connection beginning at the intersection of Ninth avenue and West Ninety-second street, over, through and along West Ninety-second street to Eighth avenue; thence over, through and along Eighth avenue to River street and the Harlem river; thence over, through and along River street, and over and along the Harlem river, over and 4131
crossing the Harlem river at or near the High Bridge, to and connecting with the New York, Boston and Montreal Railroad, or the depot thereof, and to and connecting with the Spuyten Duyvil and Port Morris Railroad, or the depot thereof.

Resolved, That whenever either of the routes hereinbefore fixed and determined crosses a street, avenue, place of lands, such route includes, and is intended to include, and shall be deemed to include such crossing and so much of said street, avenue, place, or lands, as is there crossed, so as to allow

4132 and enable the construction of continuous and connected lines of railway along the route so crossing.

Upon motion of Mr. Canda, seconded by Mr. Brown, the following Preamble and Resolutions were unanimously adopted:

Whereas, The Gilbert Elevated Railway Company, by its Board of Directors, in meeting duly convened, has taken proceedings and adopted a Preamble and Resolutions, which appear in a com-
4133 munication from said Company, to this Board of Commissioners addressed, and in terms as follows:

"Whereas, This Company did, heretofore, on the twenty-sixth day of July, 1875, address a communication to the Board of Commissioners, organized under chapter 606 of the Laws of 1875, requesting said Board, acting under the powers granted by said act, to locate a railway route in the City of New York, coincident with the route of this Company, and engaging to submit to such conditions and requirements in respect to structure or otherwise, as might be imposed by said
4134 Board of Commissioners;

"And Whereas, Said Board of Commissioners has, through its Secretary, addressed to William Foster, Jr., President of the Gilbert Elevated Railway Company, a communication covering certain resolutions offered for consideration and adoption by this Company as the consideration and basis of further action of said Board of Commissioners—all of which communications have been laid before this Board of Directors, by its

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President, and considered; and this Board of Directors, deeming itself and being advised that it is authorized and empowered, on behalf of this Company, to accept and perform, and to bind itself in future to perform and carry out all the conditions and requirements set forth or mentioned in the resolutions, and, deeming it for the best interest of this Company, that it should become so bound, and that the preamble and resolutions should be adopted and become binding in full upon this Company;

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"Resolved, That the following preamble and resolution be and hereby are passed and adopted, and that the Secretary be and he is hereby authorized and instructed to enter the same upon the minutes of this Board of Directors, and to transmit a full copy of said minutes of the proceedings of this day, duly certified, to Burton N. Harrison, Secretary of the Board of Commissioners:

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"Whereas, The Board of Commissioners, appointed by the Mayor of the City of New York, under the terms and provisions of chapter 606, Laws of 1875, has required of this Company certain stipulations and agreements, by this Company to be made and agreed to, as a condition precedent to fixing and determining the route or routes which shall coincide with the route or routes covered by the Charter of this Company, such stipulations and agreements to be by this Company fulfilled and performed, and the same to be the consideration for and upon which said Board of Commissioners will fix and determine such route or routes; now, therefore,

"Resolved, That, for and in consideration of the fixing and determination, by said Board of Com-

4138 missioners, of a route or routes coincident with the route or routes covered by the Charter of this Corporation, and for and upon other valuable considerations this company thereto moving, this company hereby stipulates, covenants, contracts and agrees, to and with said Board of Commissioners, as follows:

"First.—That this Company shall and will construct and complete its railway, as follows, subject only to the proviso hereinafter stated as to the time of completion:

4139 "1st. Over and along so much of the route as shall be, by said Board of Commissioners, fixed and determined from Forty-second street towards the southern end of the city, not less than three miles, on either side of the city as may be elected by this Company, running south from Forty-second street—within ten months from the 1st day of October, 1875;

"2d. Over and along so much of the route as shall be by said Board of Commissioners fixed and determined over and along and coincident with
4140 the other portions of the route or routes covered by the Charter of this Company—at the rate of not less than five miles in every twelve months after the expiration of the ten months above limited and beginning immediately upon the expiration of said ten months, until the entire railway shall be completed.

"The proviso hereinbefore referred to as to time of completion of said several sections or portions of railroad, is this, as follows: that the time, if any, unavoidably consumed by the pendency of legal proceedings or by the interference of the public authorities, or by the neglect of the public

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authorities to grade those portions of Ninth avenue or of One Hundred and Tenth street not now graded, shall not be deemed a part of any period of the time within which completion of the railroad is hereby stipulated, covenanted, contracted and agreed to be made. But it is distinctly understood and agreed by said Board of Commissioners and by this Company, that the time, if any, during which such unavoidable delay shall continue, shall be added to each of the periods hereby otherwise limited for construction and completion of the railway.

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"Second.—That this Company accepts, and shall and will be governed by, and shall and will charge and collect rates of fares only as follows—the same being the rates of fares by the charter of this Company authorized to be charged and collected, as modified by said Board of Commissioners and fixed and allowed to be by this Company collected, as follows:

"1st. Upon trains and in cars other than those hereinafter called 'commission trains' or 'cars,' for all distances on the east side of the city, not exceeding five miles, not to exceed ten cents, and not to exceed two cents per mile for each mile or fraction of a mile in excess of a mile over five miles, until the fare shall amount for a through passenger, on the east side of the city, from and between the southern terminus of the railway or any point north thereof and the Harlem river, to not to exceed fifteen cents, and from and between the southern terminus of the railway or any point to the north thereof and the High Bridge, to not to exceed seventeen cents—which said sum of fifteen cents shall be the maximum charge as fare for

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4144 a through passenger to or from Harlem Bridge—and which said sum of seventeen cents shall be the maximum charge as fare for a through passenger to or from the High Bridge. In this connection, it is understood and agreed, that, for the entire distance on the east side of the city from and between the southern terminus of the railway and East Fifty-ninth street, or from and between the southern terminus of the railway and West Fifty-ninth street, the fare shall not exceed ten cents per passenger.

4145 "2d. Upon special trains or cars, to be run over the entire length of the railway on the east side of the city, and over the portion of the railway on the west side of the city, from and between West Fifty-ninth street and the southern terminus, for the accommodation of the laboring classes and of the public (and which special train and cars shall be known and designated as 'Commission trains' and 'Commission cars'), from 5:30 o'clock A. M. to and until 7:30 o'clock A. M., and from 5 o'clock P. M. to and until 7 o'clock P. M., not exceeding one-half the rates of fares above limited

4146 —the distance between the southern terminus of the railway and East Fifty-ninth street, and that between the southern terminus of the railway and West Fifty-ninth street being taken always as, for the purpose of charging and collecting fares, to be not exceeding five miles, and the maximum rate of fare to be charged to and collected from a through passenger on a 'Commission train' or in a 'Commission car,' from and between the southern terminus of the railway, or any point to the north thereof and the northern terminus of the railway, to be not to exceed seven cents

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to or from the Harlem Bridge, and not to exceed eight cents to or from the High Bridge. It is, however, hereby understood and agreed, by and between the said Board of Commissioners and this Company, that, as a part of any train run over any portion of the route or routes so determined of the railway of this Company, there may be one or more cars of the kind known as 'Saloon cars' or 'Drawing-room cars,' with special arrangements for extra comfort and space for the passenger; and that there may be demanded, charged to, and collected from each person who shall ride 4148
in such a 'Saloon car' or 'Drawing-room car' an extra (though not unreasonable) rate of fare in addition to the rates hereinbefore mentioned. It is, however, further understood and agreed by and between said Board of Commissioners and this Company, that, as a part of each and every train, there shall be cars, other than 'Saloon cars' or 'Drawing-room cars,' sufficient to accommodate all persons who do not prefer to ride in 'Saloon cars' or 'Drawing-room cars,' and who are not willing to pay the extra rate of fare for special arrangements for extra comfort and space; and 4149
that if and whenever there is not accommodation provided in the train, on such other cars, for each and all the passengers desiring to travel in them, that then, and in that case only, any passenger who may take a seat in a 'Saloon car' or 'Drawing-room car' shall be entitled to occupy the same without payment of the extra rate of fare otherwise allowed to be charged in such 'Saloon car' or 'Drawing-room car.' And as it is possible that some portions of the lines of railways in this city may be operated by one company, and other portions be operated by another company, it is fur-

4150 ther provided and hereby stipulated, covenanted, contracted and agreed that, if and whenever this company shall operate either portion thereof, it shall and will make connections, and shall and will carry passengers upon all portions of its lines, for such pro rata share of the prices above fixed and limited as it shall be entitled to by its pro rata of mileage, and that it shall and will exchange cars with the other company, as is customary among railroad companies, for the convenience of the public.

4151 "Third.—That this Company shall and will run, daily, special trains or cars (to be known and designated as 'Commission trains' and 'Commission cars'), in numbers sufficient amply to accommodate the travel, and at intervals really to accommodate the laboring classes, beginning at 5:30 o'clock A. M., to and until 7:30 o'clock A. M., and again beginning at 5 o'clock P. M. to and until 7 o'clock P. M.—such trains to be run from and between the southern terminus of the railway and the High Bridge, on the east side of the city, to stop regularly at the usual stations of the Com-

4152 pany, and to run at the rate of speed of the other local trains of the Company—except that certain of such 'Commission trains' may be through trains, from and between the Battery and Harlem Bridge or High Bridge, at a rate of speed faster than that of the other 'Commission trains,' if such faster 'Commission trains' shall be found to be necessary to accommodate the laboring classes. In this connection it is understood, however, that it shall not be necessary to devote an entire train to the purposes of a 'Commission train,' as above provided for, but that the object of this Third

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paragraph shall be considered to be accomplished if special cars ('Commission cars'), in numbers sufficient to meet the demand of persons desiring to travel in them, shall be provided for the laboring classes and others, and attached to trains running during the hours above indicated, in which special cars ('Commission cars') only the lower rates of fares above specified shall be charged.

"Fourth.—That, in the construction of the Railway of this Company, the structure shall be an Elevated double track iron Railway, to be constructed in all substantial respects in accordance 4154
with plans and specifications to be made and agreed to by the President of this Company and the said Board of Commissioners, with the privilege, however, to this Company to have, and with provision for hereafter having, three tracks of railway, along and upon the portions of the route upon which this Company may hereafter, and from time to time, think it desirable to construct a third track. But it is understood and agreed, by and between said Board of Commissioners and this Company, that, upon that portion of the route
over, along and through River street, from and 4155
between Harlem Bridge and Kings Bridge, along the line of the Harlem river, the structure of the railway to be there constructed may be built upon or near the surface, upon piles or otherwise, in such manner as this Company may find desirable and most convenient—the said structure to be there changed to an Elevated railway, if and whenever, and as soon as, by the public authorities having jurisdiction in the matter, the Company shall be required to do so, after the said River street shall be opened and filled in as a street.

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"Fifth.—That this Company shall and will, upon demand by said Board of Commissioners, pay over to and for the use of said Board, such fair and reasonable proportion of the expenses, etc., of said Board as by the said Board may be allotted to be by this Company paid.

"Sixth.—That the President and Treasurer of this Company are hereby authorized and directed to make, execute and deliver in the name and under the Corporate seal of this Company, such indenture and indentures, and each, every and all

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such other paper and papers, as and whenever, from time to time, by the said Board of Commissioners or by their Counsel learned in the law, shall be required or demanded, the better to express and secure performance of the stipulations, covenants, contracts and agreements, and each and every of them, hereinbefore stated or intended by this Company to be made—one of such indentures, in the name and over the Corporate seal of this Company, to be the bond and obligation of this Company to 'the Mayor, Aldermen and Commonalty of the City of New York,' or to 'the People

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of the State of New York,' or to such other obligee or obligees as said Board of Commissioners shall by Counsel be advised to prefer, and as said Board of Commissioners shall indicate—such bond and obligation to be in the penal sum of two hundred and fifty thousand dollars ($250,000), with such sureties as may by this Company be procured and by said Board of Commissioners may be found satisfactory, and conditioned that the said stipulations, covenants, contracts and agreements, and each and every of them, hereinbefore stated or intended by this Company to be

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made, shall and will be in good faith, fully and as hereinbefore expressed or intended fulfilled and performed."

Now, therefore, in consideration of said the stipulations, covenants, contracts and agreements, of the said the Gilbert Elevated Railway Company, and in reliance upon and consideration of the fulfilment and performance by the said the Gilbert Elevated Railway Company, its successors and assigns, of said stipulations, covenants, contracts and agreements, each and every of them, it is hereby, by this Board of Commissioners,

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Resolved, That, in pursuance of the powers conferred upon us by chapter 606, Laws of 1875, we do hereby fix and determine upon the route or routes of a steam railway or railways, in the City of New York, as follows:

Beginning on the south shore of the Harlem river, at Kingsbridge, and proceeding thence by a route the same as and coincident with the route and routes heretofore ascertained, designated and established for the Gilbert Elevated Railway Company, under, by, and pursuant to chapter 885 of

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Laws of 1872, chapter 837 of Laws of 1873, and chapter 275 of Laws of 1874, and as the said route was ascertained, designated and established by the two several reports of the two Boards of Commissioners, appointed under the two acts first above mentioned, copies of which reports are now on file in the office of the County Clerk of the City and County of New York, and the originals of which reports are in possession of the Gilbert Elevated Railway Company, and by, through, along and over all streets, avenues and places included in and

4162 covered by said route and routes, and the connecting lines and extensions belonging to the same, to a point coterminous with the route and routes of the said the Gilbert Elevated Railway Company —the route and routes hereby determined upon coinciding with the route and routes covered by the charter of the Gilbert Elevated Railway Company, an existing corporation formed for the purpose provided for by chapter 606 of the Laws of 1875.

4163 The route above fixed and determined upon, begins, continues and terminates as follows:

Commencing on the south shore of Harlem river, at Kingsbridge; thence along River street to Eighth avenue; thence along Eighth avenue to One Hundred and Tenth street; thence along One Hundred and Tenth street to Ninth avenue; thence along Ninth avenue to Fifty-third street; thence along Fifty-third street to Sixth avenue; thence along Sixth avenue to Amity street; thence along Amity street to South Fifth avenue; thence along South Fifth avenue to Canal street; thence crossing Canal
4164 street into West Broadway; thence along West Broadway to Chambers street; thence across Chambers street into College place, to the intersection of College place and Murray street; thence easterly along Murray street to the intersection of Murray with Church street; thence southerly along Church street to New Church street; thence southerly along New Church street to and across Morris street to a point on the southerly line of Morris street, sixty-five feet from the southeasterly corner of Greenwich and Morris streets; thence southerly through private property, parallel to the easterly line of Greenwich street, a distance of thirty-five feet;

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thence on a curve of one hundred and eighty feet radius, intersecting the building line on the westerly side of Broadway, two hundred and two feet from the southerly corner of Morris street and Broadway, to Bowling Green, west of the westerly line of Broadway, to and around Bowling Green park into Beaver street; thence along Beaver street to Pearl street; thence along Pearl street and New Bowery to Division street; thence along Division street to Allen street; thence along Allen street and First avenue to Twenty-third street; thence along Twenty-third street to Second avenue; thence along Second avenue to Harlem river; thence along River street to Eighth avenue.

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Also, a connecting line through and along Chambers street, from West Broadway to Chatham street; thence along Chatham street to Division street.

Also, an exension from the junction of Fifty-third street through and along Sixth avenue to Fifty-ninth street.

Provided, however, that this resolution is not intended to apply, and shall not be deemed to apply, to any street or part thereof upon which this Board of Commissioners is not authorized by chapter 606 of Laws of 1875, to fix, determine and locate a route or routes of railway.

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Resolved, That the Gilbert Elevated Railway Company, in availing itself of the rights and powers conferred by chapter 606, Laws of 1875, is hereby required (with a view so to cheapen the cost of construction as to enable said company to carry passengers at the rates of fare which have been prescribed by this Board of Commissioners, and by said resolutions of the Board of Directors of

4168 said company have been agreed to, and as a condition of the determination of the route above determined) to construct the railway of said company, with such modifications of the original plans upon which said company was, by its charter, authorized to construct the same, as to make the same correspond with the plan or plans and mode of construction which shall hereafter, in due course, be decided upon by this Board of Commissioners for such route.

Upon motion of Mr. Mott, adjourned to 3d inst., 4169 at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Friday, September 3, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Conelius H. Delamater, Jordon L. Mott, and Charles J. Canda.

4170 Upon motion of Mr. Brown, the reading of the minutes was dispensed with.

Communications were received from various persons, read, considered, numbered and filed.

Among them is one from Messrs. J. B. & J. M. Cornell, which proposes further modifications of the route originally designated by them.

Messrs. Lowrey, Alexander, Foster, Navarro and others connected with the Gilbert Elevated Railway Company, and Messrs. Scott, Courtright and others connected with the New York Elevated Railroad Company, had further hearings before the Board.

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Mr. Smith and Mr. S. E. Church appeared before the Board, and had a hearing in reference to a proposed "depressed" or "open-cut" railway advocated by them. Mr. W. H. Morrell also had a hearing in reference to a route advocated by him, a portion of which would be along Park row.

It was moved by Mr. Delamater that the Board do now fix, determine and locate the route described in the communication to the Board, addressed by Messrs. J. B. & J. M. Cornell, bearing date July 29, 1875—the communication being accompanied by a map showing the proposed route, and by plans of construction illustrated by a model and drawings therewith submitted.

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The motion was seconded by Mr. Mott, and, after discussion, was, upon a call of the ayes and noes, lost by the following vote:

In the affirmative—Mr. Delamater;

In the negative—Messrs. Seligman, Brown, Mott and Canda.

Mr. Delamater then read the communication by Messrs. J. B. & J. M. Cornell addressed to the Board, bearing date September 2, 1875, and moved:

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That the Board do now fix, determine and locate the route in that communication described.

The motion was seconded by Mr. Mott, and, after discussion, was, upon a call of the ayes and noes, lost, by the following vote:

In the affirmative—Messrs. Delamater and Mott;

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In the negative—Messrs. Seligman, Brown and Canda.

Upon motion of Mr. Brown, seconded by Mr. Mott, the following Preamble and Resolutions were unanimously adopted:

Whereas, It is considered by this Board of Commissioners desirable, for the public convenience, to fix and determine the route or routes for a steam railway or railways in the City of New York, and to locate the route or routes of such railway or railways over, along, through, or across the streets,

4175 avenues, places, and lands in the City and County of New York, as hereinafter mentioned; now, therefore,

Resolved, That this Board of Commissioners hereby fixes and determines the route or routes for such steam railway or railways, and locates the route or routes of such railway or railways, over, along, through, or across the streets, avenues, places, or lands in the City and County of New York, as follows:

Beginning at the intersection of Greenwich street and Battery place, to, over, and across Battery

4176 place to the edge of the Battery and State street; thence over, through and along the edge of the Battery and State street to Whitehall street; thence over, through and along Whitehall street to and connecting with the South Ferry, Hamilton Avenue Ferry, and Staten Island Ferry; and from the intersection of State street and Whitehall street over and across Whitehall street to Front street; thence over, through and along Front street to Coenties slip; thence over, through, along and across Coenties slip to the intersection of Coenties slip and Pearl street; thence over, through and

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along Pearl street to Hanover square; thence over, through and along Hanover square and Pearl street to John street; thence over, through and along John street and Burling slip to, over, along and across South street to and connecting with the Fulton Ferry; and from the intersection of John street and Pearl street, crossing John street over, through and along Pearl street and Franklin square to New Bowery; thence over, through and along New Bowery and Chatham square to the Bowery; thence over, through and along the Bowery to Third avenue; thence over, through and along 4178
Third avenue to East Thirty-fourth street; thence over, through and along East Thirty-fourth street to and connecting with the Thirty-fourth Street Ferry; and from the interestion of East Thirty-fourth street and Third avenue, crossing East Thirty-fourth street, over, through and along Third Avenue to East Forty-second street; thence over, through and along East Forty-second street to and across Fourth avenue to and connecting with the depot, known as the "Grand Central," occupied by the New York Central and Hudson River Railroad Company, the New York and Harlem Railroad 4179
Company, and the New York, New Haven and Hartford Railroad Company; and from the intersection of East Forty-second street and Third avenue, and crossing East Forty-second street, over, through and along Third avenue to East Ninety-second street; thence over, through and along East Ninety-second street to, and connecting with the Astoria Ferry; and from the intersection of Third avenue and East Ninety-second street, crossing East Ninety-second street, over, through and along Third avenue to East One Hundred and Twenty-ninth street (there connecting with the ferries hav-

4180 ing landings at or near Harlem bridge); thence over, through and along East One Hundred and Twenty-ninth street to the intersection of East One Hundred and Twenty-ninth street and the Harlem river; thence over and along the Harlem river to First avenue; thence over and across the Harlem river, connecting with the depot of the Portchester branch of the New York, New Haven and Hartford Railroad; and from the intersection of Third avenue and East One Hundred and Twenty-ninth street, over and across Third avenue, and over,
4181 through and along East One Hundred and Twenty-ninth street to Lexington avenue; thence over, through and along Lexington avenue to River street and the Harlem river; thence over, through and along River street and the southerly shore of the Harlem river to, and connecting with, the railway of the New York and Harlem Railroad at Fourth avenue. With a branch and turnout from the intersection of New Bowery and Chatham square, over, through and along Chatham square to Chatham street; thence over, through and along Chatham street to Park row; thence over, through
4182 and along Park row to Tryon row (there to connect with the railway to be laid over the East river bridge for cars to be operated or propelled by steam); thence over, through and along, or in front of and around Tryon row to the Park; thence along the Park and over, through and along Centre street to Park street; thence over, through and along Park street to Mott street, crossing over Mott street; thence over and through the block to Doyer street, crossing over Doyer street; thence over and through the block to Pell street, crossing over Pell street; thence over, through and along Pell street and intersecting the route hereinbefore fixed and

4183

determined over, through and along the Bowery. And with a siding for a turn-around, commencing at the intersection of Coenties slip and Water street; thence over, through and along Water street to Whitehall street; thence over, through and along Whitehall street to and intersecting the route hereinbefore fixed and determined at the intersection of Front street and Whitehall street. And also a route of connection beginning at the intersection of Ninth avenue and West Ninety-second street, over, through and along West Ninety-second street to Eighth avenue; thence over, through and along 4184
Eighth avenue to River street and the Harlem river; thence over, through and along River street, and over and along the Harlem river, over and crossing the Harlem river at or near the High Bridge, to and connecting with the New York, Boston and Montreal Railroad, or the depot thereof, and to and connecting with the Spuyten Duyvil and Port Morris Railroad, or the depot thereof.

Resolved, That whenever either of the routes hereinbefore fixed and determined crosses a street, avenue, place or lands, such route includes, and is intended to include, and shall be deemed to in- 4185
clude, such crossing and so much of said street, avenue, place, or lands, as is there crossed, so as to allow and enable the construction of continuous and connected lines of railway along the route so crossing.

Upon motion of Mr. Brown, seconded by Mr. Mott, the following Preamble and Resolutions were unanimously adopted:

Whereas, It is considered by this Board of Commissioners desirable for the public convenience to fix and determine the route or routes for a steam

4186 railway or railways in the City of New York, and to locate the route or routes of such railway or railways over, along, through, or across the streets, avenues, places, and lands in the City and County of New York, as hereinafter mentioned; now, therefore,

Resolved, That this Board of Commissioners hereby fixes and determines the route or routes for such steam railway or railways, and locates the route or routes of such railway or railways over, along, through, or across the streets, avenues,
4187 places, or lands in the City and County of New York, as follows: Beginning on the south shore of the Harlem river, at Kingsbridge, and proceeding thence by a route which is (except for variations hereinafter made) the same as and coincident with the route and routes heretofore ascertained, designated and established for the Gilbert Elevated Railway Company, under, by and pursuant to chapter 885 of Laws of 1872, chapter 837 of Laws of 1873, and chapter 275 of Laws of 1874, and (except as to said variations) as the said route was ascertained, designated and established by
4188 the two several reports of the two Boards of Commissioners appointed under the two acts first above mentioned, copies of which reports are now on file in the office of the County Clerk of the City and County of New York, and the originals of which reports are in possession of the Gilbert Elevated Railway Company, and by, through, along, and over all streets, avenues and places included in and covered by said route and routes, and the connecting lines and extensions belonging to the same, to a point coterminous with the route and routes of the said the Gilbert Elevated Railway

Company—the route or routes hereby determined upon (except as to said variations) coinciding with the route and routes covered by the charter of the Gilbert Elevated Railway Company, an existing corporation formed for the purpose provided for by chapter 606 of Laws of 1875. 4189

The route above fixed and determined upon, begins, continues and terminates as follows:

Commencing on the south shore of Harlem river, at Kingsbridge, thence through and along River street to Eighth avenue; thence over, through and along Eighth avenue to Ninety-second street; 4190
thence over, through and along Ninety-second street to Ninth avenue; thence over, through and along Ninth avenue to Fifty-third street; thence over, through and along Fifty-third street to Sixth avenue; thence over, through and along Sixth avenue to Amity street; thence over, through and along Amity street to South Fifth avenue; thence over, through and along South Fifth avenue to Canal street; thence over, through and across Canal street into West Broadway; thence over, through and along West Broadway to Chambers street; thence over, through and across Chambers street into 4191
College place; thence southerly over, through and along College place to Murray street; thence easterly over, through and along Murray street to Church street; thence southerly over, through and along Church street to New Church street; thence southerly over, through and along New Church street to, through, over and across Morris street to a point on the southerly line of Morris street, sixty-five feet from the southeasterly corner of Greenwich and Morris streets; thence southerly over and through private property, parallel to the easterly line of Greenwich street, a distance of

4192 thirty-five feet; thence over and on a curve of one hundred and eighty feet radius, intersecting the building line on the westerly side of Broadway, two hundred and two feet from the southerly corner of Morris street and Broadway, to Bowling Green, west of the westerly line of Broadway, to and around Bowling Green park into Beaver street; thence over, through and along Beaver street to Pearl street; thence over, through and along Pearl street and New Bowery to Division street; thence over, through and along Division street to Chrystie
4193 street; thence over, through, and along Chrystie street and Second avenue to Harlem river; thence through and along River street to Eighth avenue.

Also, an extension from the junction of Fifty-third street, over, through and along Sixth avenue to Fifty-ninth street.

Also, an extension from the junction of East Twenty-third street and Second avenue, over, through and along Twenty-third street to the Third avenue.

Also, an extension from the junction of East Forty-second street and Second avenue, over,
4194 through and along East Forty-second street to the Third avenue; thence to connect with the Grand Central Depot.

Provided, however, that this resolution is not intended to apply, and shall not be deemed to apply to any street or part thereof upon which this Board of Commissioners is not authorized by chapter 606 of Laws of 1875, to fix, determine and locate a route or routes of railway.

Resolved, That whenever either of the routes or extensions, hereinbefore fixed and determined, crosses a street, avenue, place or lands, such route or extension includes, and is intended to include,

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and shall be deemed to include, such crossing and so much of said street, avenue, place or lands as is there crossed, so as to allow and enable the construction of continuous and connected lines of railway along the route or extension so crossing.

The President directed the following communication, from the Clerk of the Common Council, to be printed in the minutes:

Office, Clerk of the Common Council, No. 8 City Hall, New York, September 2, 1875.

To the Honorable the Board of Commissioners of Rapid Transit:

4196

Gentlemen—The following extract from the proceedings of a meeting of the Board of Aldermen, held Thursday, September 2, 1875, is transmitted for the information of your Honorable Body, particular attention being requested to the concluding paragraphs:

* * * * * *

Alderman Purroy called up G. O. 468, being a preamble and resolution, as follows:

Whereas, Joseph Seligman, Cornelius H. Delamater, Jordan L. Mott, Lewis B. Brown, and Charles J. Canda, by appointment of the Mayor, 4197
Commissioners to locate a railway or railways in this city, under the provisions of chapter 606, Laws of 1875, have, through his Honor the Mayor, made application to the Common Council for its consent to the location, construction and operation of a steam railway or railways upon such of the streets, avenues and places in this city as said Commissioners may deem most advantageous and convenient for the use of the inhabitants thereof, and of the traveling public generally, such railways to be constructed upon plans and in a manner to be pre-

scribed by said Commission, and upon special routes to be selected by them; and

Whereas, It is deemed for the public interest that said Commissioner shall be unembarrassed during the full time allowed them to determine and fix the routes of such railway or railways and connections, and be free, during such period, to select, in the exercise of the discretion conferred upon them by the Legislature, for such route or routes, any street, avenue, or place, or a part thereof, in this city, limited only by the terms of the act under
4199 which they are organized; therefore

Resolved, That consent is hereby given for the location, construction and operation of steam railways or connections thereof in, over, under, through or across any and all streets, avenues, lands and places in this city subject to the control of this Common Council, over, under, through or across which said Commissioners are now authorized by the act aforesaid to locate railways or connections thereof, provided that such of said railways and connections as are to be above the surface of the ground shall be constructed as elevated railways,
4200 not less than fourteen feet above the surface of the ground or water, except in River street, along the Harlem river, where the same may be built on piles on or near the surface of the water; and further provided, that any company constructing such railway on River street shall first stipulate in writing, for itself, its successors, and assigns, to change their railway on said street to an elevated railway of the description aforesaid whenever said street shall be filled in, and such change shall be required by the local authorities having control of said street at the time of such requirement.

Alderman Seery moved that the paper be again laid over.

4201

The President put the question whether the Board would agree with said motion.

Which was decided in the affirmative, on a division called by Alderman Morris, viz.:

Affirmative—Aldermen Blessing, Cole, Deane, Guntzer, Lysaght, McCarthy, Power, Reilly, Seery, Simonson, and Strack—11.

Negative—The President, Aldermen Gilon, Gross, Howland, Morris, Purroy, Robinson, Shandley, and Southworth—9.

Subsequently Aldermen Gilon called up the above General Order.

4202

Alderman Reilly moved that the further consideration of the General Order be postponed and made a special order for the next meeting of the Board.

The President put the question whether the Board would agree with said motion.

Which was decided in the negative, on a division called by Alderman Morris, viz.:

Affirmative—Aldermen Blessing, Deane, Guntzer, Lysaght, Power, Reilly, Seery, Shandley, Southworth, and Strack—10.

Negative—The President, Aldermen Cole, Gilon, Gross, Howland, McCarthy, Morris, Purroy, Robinson, and Simonson—10.

4203

Whereupon Alderman Purroy offered the following amendment:

Provided, however, that nothing herein contained shall be construed to prevent the necessity of the consent of the Common Council being obtained, after the route shall be fixed by the Commissioners of Rapid Transit.

Alderman Seery moved to refer the amendment to the Counsel to the Corporation for his opinion as to its legality.

4204 Alderman Morris moved to amend the motion of Alderman Seery, by adding "with instructions to report at the next meeting."

Which was accepted by Alderman Seery.

And the question being taken thereon, was lost, on a division called by Alderman Deane, viz.:

Affirmative—Aldermen Deane, Guntzer, Lysaght, Power, Reilly, Robinson, Seery, Southworth, and Strack—9.

Negative—The President, Aldermen Cole, Gilon, Gross, Howland, McCarthy, Morris, Purroy, Shand-
4205 ley and Simonson—10.

The President put the question whether the Board would agree with the amendment of Alderman Purroy.

Which was decided in the negative, on a division called by Alderman Purroy, viz.:

Affirmative—The President, Aldermen Cole, Gilon, Gross, Howland, McCarthy, Purroy and Simonson—8.

Negative—Aldermen Blessing, Deane, Guntzer, Lysaght, Morris, Power, Reilly, Robinson, Seery, Shandley, Southworth and Strack—12.

4206 Alderman Blessing moved that the paper be taken from the list of General Orders and made a special order of business for the next meeting of the Board.

The President put the question whether the Board would agree with said motion.

Which was decided in the negative, on a division called by Alderman Deane, viz.:

Affirmative—Aldermen Blessing, Deane, Guntzer, Power, Reilly, Robinson, Seery, Shandley, Southworth and Strack—10.

Negative—The President, Aldermen Cole, Gilon,

Gross, Howland, Lysaght, McCarthy, Morris, Purroy and Simonson—10. 4207

The President then put the question whether the Board would agree to adopt General Order 468.

Which was decided in the negative by the following vote:

Affirmative—The President, Aldermen Cole, Gilon, Gross, Howland, Morris, Purroy and Simonson—8.

Negative—Aldermen Blessing, Deane, Guntzer, Lysaght, Power, Reilly, Robinson, Seery, Shandley, Southworth and Strack—11. 4208

Alderman McCarthy was excused from voting.

On motion of Alderman Simonson, the above vote was reconsidered, and the paper again laid over.

Alderman Strack moved that the paper be taken from the list of General Orders and transmitted to the Commissioners of Rapid Transit, with the request that they return the papers, with the route or routes selected for rapid transit, at the next meeting of the Board.

As an amendment, Alderman Purroy moved to strike out all relating to returning the General Order to the Commissioners, and that they be requested simply to transmit to this Board, at its meeting on Monday next, the route or routes selected or designated by the said Commissioners in this city. 4209

Which was accepted by Alderman Strack.

The President put the question whether the Board would agree with said motion.

Which was decided in the affirmative.

Very respectfully, Francis J. Twomey, Clerk."

When the motion made by Mr. Brown was under consideration, Mr. Canda moved that it be so

4210 amended as not to allow a railway along any portion of Chrystie street, or along any portion of Second avenue below Twenty-third street.

The motion was seconded by Mr. Delamater, but was lost, only Mr. Canda voting in the affirmative, the other Commissioners voting in the negative.

Upon motion of Mr. Mott, adjourned to the 6th instant, at 1 P. M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New
4211 Court-house.

Monday, September 6, 1875—1 o'clock P. M.

The Board met, pursuant to adjournment, at 1 o'clock P. M.

Present—Four of the Commissioners, viz.: The President, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

Communications were received from various persons, read, considered, numbered and filed.

Mr. Canda renewed his motion, made at the last
4212 meeting, not to allow a railway to be constructed along any portion of Chrystie street, or along any portion of Second avenue below Twenty-third street.

The motion was again seconded by Mr. Delamater, but was again lost, only Mr. Canda voting in the affirmative, the other Commissioners voting in the negative.

Mr. Courtright, President of the New York Elevated Railroad Company, submitted to the Board the following communication:

Office of the New York Elevated Railroad Com-

pany, No. 7 Broadway, New York, September 3, 1875.

To the Hon. the Board of Commissioners, appointed by the Mayor, under the provisions of chapter 606 of the Laws of 1875:

Gentlemen—The New York Elevated Railroad Company, by us, the undersigned, the Committee of the Board of Directors of said Company, thereto, by resolution of the Board, duly authorized, has heretofore assented to and accepted the modification, addition, or change by you in your resolution of the 2d instant made, in the route or routes theretofore applied for by the Company, and in the conditions, stipulations and agreements of the preamble and resolutions adopted on the 27th ultimo by the Board of which we are a Committee. 4214

But we think it proper, in this formal manner, again to express to you the fact that the Company has assented to and accepted (1) the route or routes by you fixed and determined, as substantially the route or routes theretofore by the Company applied for, and in lieu thereof; and (2) the modifications, additions and changes by you so made in the conditions, stipulations and agreements of said resolutions of 27th ult. 4215

Very respectfully,

M. Courtright, President,
David Dows, Director,
Wm. L. Scott, "
Committee.

(Seal of the Co.)
J. A. Cowing, Secretary.

After protracted discussion as to the details of a statement of the proceedings of the Board to this

4216 date, the following Report was, at 5:30 o'clock P. M., unanimously agreed to, and was signed and transmitted to the Mayor—Mr. Brown having heretofore authorized his name to be inserted by Mr. Canda in the list of signatures:

Office of the Board of Commissioners of Rapid Transit, New York, Sept. 6, 1875.

To his Honor William H. Wickham, Mayor:

Sir—The undersigned, constituting the Board of Commissioners, appointed by you under the provisions of chapter 606, Laws of 1875, having, by
4217 the selection of routes for Rapid Transit railways in this city, concluded a portion of the labors imposed upon them by law, deem it proper to make an official record of their action in the form of a report to you.

The statute has failed to provide or direct any specific method in which the record of our official action may be filed. But the evident necessity that authentic evidence of that action should be somewhere preserved, and the fact that this Board of Commissioners exists by appointment of the Mayor, lead us to regard your office as the proper
4218 place of deposit for such record.

The law itself, under which we were appointed, would never have been enacted but for your efforts, and we are enabled by this occasion to bear testimony to the zeal and high purpose by which you have been moved to accomplish, if possible, during your term of office, this great benefit to the people of New York. Should it come to pass, as we now hope, that the present efforts in that direction shall result in establishing rapid and cheap means of communication through this city, we shall always cheerfully declare that, among the most efficient aids to that great benefaction, to poor

4219

and rich alike, will have been the wise counsel and intelligent support which this Board of Commissioners has received from you.

Upon receiving our appointment, and being duly qualified as required by statute, we organized on the eight day of July, 1875, by the election of Mr. Seligman as President, and Burton N. Harrison, Esq., as Secretary. We afterwards formally retained Mr. Harrison as counsel also to the Board. To Mr. Seligman's courtesy, firmness and good sense, we are largely indebted for the harmony with which we have worked together, and for 4220
the unanimity with which our conclusions were reached. In considering the numerous and difficult questions of law which arise under this statute, the accuracy and legal learning of Mr. Harrison have been invaluable. Acting under this advice, we have submitted various questions of importance to Hon. James Emott and Stephen P. Nash, Esq., as special counsel. Upon one of the questions presented to us we have had the use of an opinion of George W. Van Siclen, Esq., and as to many of them we have been advised by Grosvenor P. Lowrey, Esq. We have been guided by the opinions by those several gentlemen expressed. The Board has also 4221
selected, as Consulting Engineers, Samuel H. Shreve and Isaac Newton, Civil Engineers, who have been and still are engaged in careful study of the numerous plans of structure which have been submitted to us.

Very soon after we had organized the Board we caused proper advertisements to be inserted in the newspapers calling for plans of construction, and also asking for suggestions as to routes, from any and all parties interested in the subject. We have received and are still considering many communi-

4222 cations and models; but, being allowed one month longer to determine upon the details of structure and the kind of road to be built, we have not yet decided upon any plans of construction. We have been attended by numbers of persons who presented their views upon the selection of a route or routes, including among them some whose interests seemed to them to require protests against the selection of certain streets and avenues. Within the time prescribed by law, we have selected such routes as, under all the circumstances, seemed to
4223 us to unite the greatest benefit to the general public with the least injury to private interests, with fewest chances for legal obstacles and most chances for enlisting the confidence of capital.

The minutes of our proceedings (a printed copy of which accompanies this report) will inform you more particularly concerning the investigations and discussions which have taken place; and appended hereto are copies of the resolutions which give an exact designation of the routes fixed and determined by us according to law.

The fourth section of the Rapid Transit Act gives
4224 to this Board exclusive authority to locate the route or routes of a steam railway or railways over, under, through or across all streets or places, except certain streets therein named, and public parks. Among the streets and avenues so forbidden to us, are all those which have been heretofore legally designated for routes of such railways—and Broadway and Fifth avenue below Fifty-ninth street, and Fourth avenue, above Forty-second street. We were met at the outset by the fact that certain of the most important and available streets for the location of such roads were already designated for and by law appropriated to one or the other of two

companies, known, respectively, as the Gilbert Elevated Railway Company and the New York Elevated Railroad Company—and that those streets could not be availed of by us except by consent of the company affected. 4225

The law also provides that no new railway shall be operated or constructed in a street, even after location by this Board, except upon the previous consent of the local authorities having control of the streets, or such portion thereof as was intended to be occupied, and also the consent of the owners of one-half in value of all the property bordering on such streets, or of the Commissioners appointed by the Supreme Court. 4226

The language of the section referred to gave rise to doubts whether such consents must not be obtained by this Board prior to any designation of streets by us, or whether that consent would be in time if given only prior to the actual construction of the railways. Being desirous to avoid every technical objection to our action, we thought it prudent to apply through you to the Common Council, in advance of any selection by us of routes (which selection, as we were advised, constituted the legal location which we were by law directed to make), and accordingly we requested you, on our behalf, to ask the Common Council for the passage of a resolution in the terms of the statute, giving us the same liberty which was given by the Legislature, to make our selections freely and at large from all streets and avenues which might seem to us appropriate. 4227

We desired this permission also in advance of the selection, since all the time permitted to us by law was required to form a sound judgment, and because we might, even at the last day, find rea-

4228 sons for making changes in the routes already contemplated. It was evident that great difference of opinion might be entertained on this question, and that, if our specific selection of streets was necessarily to be submitted to discussion and veto by still another official body, after we should have acted, it might happen that such differences would prove irreconcilable, and that nothing would be finally gained for the accommodation of the people. We are now officially informed that the Common Council, after full consideration of our request, has

4229 thought it not consistent with their sense of duty to allow us the larger liberty which we thought would have been conducive to the public good, and has requested to be notified of specific locations as soon as made.

We have to ask, therefore, that you will communicate to that body the result of our action, and request from them their consent, in the manner provided by law, to the location, construction and operation of steam railways, over, upon, along, across or under the streets, avenues, and places, and each of them, fixed and determined by us for

4230 routes of such railways.

In view of the danger that differences of opinion, which may honestly exist between the Common Council and ourselves, might lead to a total failure to establish any legal routes, we have, upon receiving their communication, been in a degree practically shut up to the consideration of routes for the use of which municipal consent is not necessary; and have been correspondingly shut out from consideration of other routes, the merits of which, and the high respectability of the parties proposing to build upon them, commended them strongly to favorable judgment. We have therefore adopted

routes which, throughout nearly, though not quite, their entire extent, may, under the conditions of the law herein explained, be occupied by the New York Elevated Railroad Company or the Gilbert Elevated Railway Company, without consent of either local authorities or property owners. 4231

In the cases of the two companies above mentioned, existing chartered rights, conferred prior to the adoption of the recent amendments to the constitution, permitted them to build upon certain important streets.

Section 36 of the Rapid Transit Act provides that, whenever any route determined upon by this Board shall coincide with the route or routes of an existing railway company, such company may, upon compliance with the requirements and conditions to be imposed by us, have the first right to build, upon routes then owned by them, the structure prescribed by us. 4232

The latter part of this section also authorizes this Board to fix and determine routes for connections between any existing elevated steam railways now in actual operation, and ferries and other railways or depots thereof. The clause last mentioned evidently refers to the one elevated steam railway in the City, belonging to the New York Elevated Railroad Company. The prohibition to us, in section 4 of the Act expressed, to locate any railway by that section referred to, over, along, upon or across Broadway or Fifth avenue, below Fifty-ninth street, effectually prevented us, perhaps, from making the most important connection needed by that road (viz., with the Grand Central Depot, at Forty-second street), by any short route; and, at any rate, the doubt as to that route of connection seemed conclusive in favor of that con- 4233

4234 struction of the law which allowed us to make the longer connection from the Battery terminus of that road by way of streets on the east side of the city, connecting with South ferry, Fulton ferry, Thirty-fourth street ferry, and others, and reaching the Grand Central depot and the ferries on the Harlem river, and stations on the New York and Harlem Railroad. In making such connections, section 36 provides that the railways therefor may be constructed, subject only to such conditions of the amended Constitution as are applicable to such
4235 railways. The amendments referred to (section 18, article 3, amended Constitution) prohibit the Legislature from passing any act authorizing any street railroad to be constructed or operated, except upon the condition that the consent of local authorities and property owners be first obtained.

The term "street railroad," as we are advised, has a definite legal significance, distinguishing those railways in general use in streets of cities by means of horse power, from those other railways, wherever located, which are propelled by steam, and which are legally and technically
4236 known as "steam railways."

Upon this distinction, as to the meaning of the term "street railroad," it has been urged upon us that the terms of the Constitution relating to street railroads do not apply to elevated steam railways, like that of the New York Elevated Railroad Company, and that that Company need not apply for the constitutional consents in building lines of connections located by us. But whether or not the Company must secure those consents before operating or constructing their connecting railways, we are advised that we are authorized to make such locations of connections for that Company as seem

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to us proper to serve the convenience of the public, without the necessity on our part, prior to such location, of obtaining the consents above mentioned. The exemption claimed for the New York Elevated Railroad is, however, not understood to apply to any elevated steam railways located by us other than those which are connections for that Company.

This distinction above referred to arises upon the terms of the act, by the fourth section of which it is provided that for all railways originally authorized by us, and to be built by companies to be 4238
organized by us, must first be obtained the above-mentioned consents. This obligation, therefore, as to such new railways of new companies, arises by force of the terms of the statute solely, without aid from the amendments to the Constitution. The Legislature, while speaking of such railways as are merely connections of railways already built and in operation, does not repeat the conditions above mentioned, except by a reference to the Constitution itself, and then only to the extent that such conditions of the Constitution are, by their own express terms, applicable to such railroads.

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Thus two kinds of routes seemed open to selection and approval by us, viz.: (1) Routes existing before January 1st, 1875, and thus within neither the statute nor the Constitution, and (2) Routes of connections for "steam railways" not covered by the legislative prohibition of the fourth section, not within the terms of the Constitution restricting legislation as to "street railroads."

The routes of the two companies above mentioned had been surveyed and designated by other Commissioners, appointed, as we were, by legislative authority, who at the time were free to locate

4240 routes according to their best judgment. After considering the same subject, we are of opinion that those selections were well made; and though we think they might, in some respects, have been better, yet, upon the whole, they are likely to meet the approval of the greatest number of disinterested persons. This opinion, to which we have come, after careful and laborious study of the subject during the past sixty days, and under the necessity for a practical determination of this subject, were in themselves almost sufficient to decide
4241 us in favor of selection of the routes which are hereby reported to you.

One other consideration added to these was amply sufficient to control our judgment and to bring us to a definite and unanimous conclusion. It is this:

During the past fifteen years, no subject has occupied the public attention to a greater degree than that of providing means of rapid transit in this city; and yet, at the passage of the Rapid Transit Act, although numerous charters had been granted by the Legislature, it did not appear that, excepting
4242 the road of the New York Elevated Railroad Company, any progress whatever had been made toward the desired result.

The difficulty seems to have been either that the plans proposed were too expensive or that the routes selected were not such as to induce capitalists to venture the investment.

We therefore made it our first duty, as practical men, to ascertain from all persons who solicited action favorable to their views, either in the adoption of plans or in the selection of routes, what means they possessed, or what grounds existed for supposing that they could obtain the requisite cap-

ital. With most of those to whom we have given hearings this question has proved unanswerable. 4243

In the case of the two companies named, we are met with fair and businesslike explanations, and we have been satisfied that persons of sufficient wealth and of well-known character are committed to the building of those roads, provided that certain existing difficulties can be removed by the action of this Board of Commissioners.

In the case of the Gilbert Elevated Railway Company, the route which they possessed, and which could not be taken away from them by any action of ours, was admirable; and it was, in most respects, entirely satisfactory to capitalists; but the structure which they were required by their charter to build, was so costly that, after three years of effort, the company had been unable to procure the money to erect it. That company was of opinion that, if required by us under the 36th section to build upon their route a structure sufficient for the public wants, but less costly than that originally intended, they would be enabled to carry on the work. 4244

Having investigated the plans by which the two companies propose to raise capital, and having ourselves personally conferred with and interrogated the gentlemen whose names were put forward as furnishing the financial guaranty, we were satisfied that the location, upon their chartered routes, of rapid transit roads under this act, accompanied by the conditions above mentioned, would, humanly speaking, render success certain. 4245

We are, in the highest degree, gratified to add that the representatives of the two companies, having met together, have entered into amicable arrangements to build certain important portions of

4246 their lines, which are located in common, by a union of their joint funds—thus securing double strength to the common object. With this explanation, you will at once understand certain apparent anomalies in the routes selected by us; as, for instance, we have located a route from the Battery to the Harlem river, principally by Third avenue and the Bowery, as and for connections for the New York Elevated Railroad Company; and also another from the Harlem river to the Battery, by Second avenue, as and for a route coincident
4247 with that of the Gilbert Elevated Railway Company. That upon the Third avenue is located as a connection between the Battery terminus of the New York Elevated Railroad and South Ferry, Fulton Ferry, and Grand Central Depot, and with other ferries and depots, and with railways in the northern and eastern parts of the city. We have also made special locations of routes over the same grounds under the fourth section of the act, which routes, to distinguish them from the already existing chartered routes and "connections" therewith, may be called "commission routes." We
4248 have taken this precaution in order that, should there be any failure to maintain these routes, under the special authority above explained, as "coinciding" railways or "connecting" railways, under the thirty-sixth section of the law, they may hereafter be built as "commission" roads by such companies as we may organize under the general provisions of the present Rapid Transit Act. It may not be probable that roads on both the Second and Third avenue will be built at the same time, or, perhaps, at all; but various considerations persauded us to make the two locations, leaving it to the influence of ordinary business principles and

the competition of the companies to determine which should be first built. Before making these locations, however, we required from each of the two companies an agreement to execute and deliver a satisfactory bond, in the sum of $250,000 for each company, for the completion of their roads within certain periods fixed; and we also required their consent, by formal resolutions of their Boards of Directors, to (among other things) rates of fare specified by us; and to a system of trains to be run between the hours of 5.30 and 7.30 A. M., and 5 o'clock and 7 o'clock P. M.—special 4250
trains—at half rates of fare, in order to accommodate those classes of the population which desire to go to and from their daily avocations within those hours. These trains, similar to the trains which are run upon railways in England for the accommodation of laboring people, at low rates of fare, during certain hours, and known as "Parliamentary trains," have, in the arrangement above referred to, been distinguished from ordinary trains as "Commission trains." We sincerely hope that they may serve the long-suffering laboring population of this city, as we have intended they 4251
should, in enabling them to place their families in salubrious and convenient homes, away from the crowded tenement houses of the city, but still within convenient distance from the business by which their bread is gained. The rates of fare fixed are as follows, on the east side of the city:

For any distance between the Battery and Fifty-ninth street, not to exceed ten cents; for any distance not exceeding five miles, not to exceed ten cents; and not to exceed two cents additional for every additional mile, or fraction of a mile in excess of a mile; but no fare for the entire distance (or any part of it) from and between the Battery

4252 and the Harlem river shall exceed fifteen cents; and no fare for the entire distance (or any part of it) from and between the Battery and High Bridge shall exceed seventeen cents.

The fares on "Commission trains" and cars—being special trains to be run on the east side of the city from 5:30 A. M. to and until 7:30 A. M., and from 5 P. M. to and until 7 P. M., at half the above rates—are to be, not to exceed five cents, seven cents, and eight cents, for the above stated distances respectively.

4253 On the west side of the city, the fares are to be as follows:

For any distance from and between the Battery and Fifty-ninth street, not to exceed ten cents; for any distance not exceeding five miles, not to exceed ten cents; and not to exceed two cents additional for every additional mile, or fraction of a mile in excess of a mile; and for "Commission trains" or cars, to be run on the west side of the city, from 5:30 A. M. to and until 7:30 A. M., and from 5 P. M. to and until 7 P. M., the fares are to be at one-half the above rates.

4254 The times for the completion of the railways of the Gilbert Elevated Railway Company are as follows:

A section of the line of that company, not less than three miles in length, and running south from Forty-second street (on either side of the city as may be preferred by the company), is to be completed within ten months from October 1, 1875. The remainder of the railways of that company is to be completed at the rate of not less than five miles in every twelve months, beginning after and upon the expiration of the ten months above mentioned.

4255

The New York Elevated Railroad Company is to complete their connecting railways—between the Battery and Fifty-ninth street, before or by September 1, 1876; from Fifty-ninth street to the Harlem river, before or by June 1, 1877; and from Ninety-second street and Ninth avenue to High Bridge, before or by June 1, 1878.

The bonds, when delivered, the resolutions of the companies, and other papers, which are necessary to us for constant reference until the final adoption of plans of construction, and definite settlement of conditions relating to them, will be re- 4256
tained by us until the completion of our work; they will then be deposited in your office.

The subject of the extension of Rapid Transit routes into the newly annexed districts (Twenty-third and Twenty-fourth Wards) was duly discussed by the Commissioners; but it was considered advisable to defer the location of routes there until a future Commission may be appointed for that purpose. The time and labor expended in laying out the routes to the Harlem river prevented the Commissioners from giving the attention to the routes in the annexed districts which would have 4257
been given under other circumstances. In view of the fact that the law permits another Commission to be appointed at any time, on the petition of fifty property owners, we have considered it proper to confine our attention to that part of the city upon Manhattan Island. The routes fixed and determined by the Commissioners connect with all the existing steam railways in the annexed districts, and will give Rapid Transit to that territory, by and along those railroads. Other routes may be determined as required at a future time.

We have been in session during almost every

4258 weekday of the last two months; there have never been less than four of us at any meeting of the Board; and, except upon three or four occasions, all five of the Commissioners have been present.

We have worked together with entire harmony, and are happy to report that the votes, by which the routes selected were determined and located, were unanimous.

Our next duty, under the law, is to consider the numerous plans of structure which have been submitted for our examination. Of these we have

4259 models and drawings of many different plans. They have all undergone the skilled and careful study and investigation of the well-known civil engineers above named. When, aided by the advice of these gentlemen, we shall have decided upon plans of structure suitable, under all the circumstances, to the routes selected, we shall make that action a subject of further report to your Honor, until which time,

We remain with great respect, Your obedient servants, Jos. Seligman, Lewis B. Brown, C. H. Delamater, Jordan L. Mott, C. J. Canda, Commis-

4260 sioners of Rapid Transit.

The Resolutions, of which copies were appended to the Report, are the four several Resolutions of the Board, which were adopted, two on the 2d instant, and the others on the 3d instant—all designating routes, and all hereinbefore appearing in these minutes.

Upon motion of Mr. Delamater, adjourned to the 8th instant, at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

4261

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Wednesday, September 8, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—Four of the Commissioners, viz.: The President, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

4262.

Upon motion of Mr. Delamater, the reading of the minutes was dispensed with.

Communications were received from various persons, read, considered, numbered and filed.

The Secretary reported that the Mayor, upon receipt at 6 o'clock P. M., on the 6th inst., of the Report of the Board bearing date that day, had immediately forwarded it to the Common Council, with a message in terms as follows:

Executive Department—City Hall, New York, September 6, 1875.

4263

To the Honorable the Common Council:

Gentlemen—I herewith transmit, for your information, and for such action as may be proper, a Report from the Board of Commissioners of Rapid Transit, appointed by me under the provisions of chapter 606, Laws of 1875.

W. H. Wickham, Mayor.

The Secretary called the attention of the Board to the fact that, neither in the City Record of the 7th inst., nor in either of the daily newspapers of that date, had the Report been printed with accuracy.

4264

The President submitted to the Board a communication from the Common Council in terms as follows:

Office Clerk of the Common Council, No. 8 City Hall, New York, September 7, 1875.

To the Honorable the Board of Commissioners of Rapid Transit:

Gentlemen—The following extract from the proceedings of a meeting of the Board of Aldermen, held Monday, September 6, 1875, is transmitted

4265

for your information—being proceedings upon the reception of the report of the Commissioners of Rapid Transit on said date:

"Alderman Morris moved that the message or report be read by the Secretary of the Commission.

The President put the question whether the Board would agree with said motion.

Which was decided in the affirmative.

The report and the accompanying documents having been read, Alderman Morris moved to accept the report and consent to the routes selected, and called up General Order No. 468 for adoption.

4266

Alderman Deane offered the following:

Resolved, That this Board, on behalf of the corporate authorities of the City of New York, hereby gives its consent to the routes adopted by the Commission on Rapid Transit, as contained in the report of said Commission, transmitted to this Board today.

Whereupon, Alderman Simonson presented the following as a substitute for resolution offered by Alderman Deane:

Resolved, That consent is hereby given to and for the location of the various routes and the con-

4267

struction and operation of steam railways, or connections thereof, through or across any and all streets, avenues, and land and places, subject to the control of the Common Council, over, under, through or across which said Commissioners have, by their report this day presented, located said routes of railways.

But he subsequently withdrew the resolution.

Alderman Shandley moved that the report of the Commissioners of Rapid Transit be laid over, printed in the minutes, and made a Special Order for the next meeting of the Board.

4268

The President put the question whether the Board would agree with said motion.

Which was decided in the negative by the following vote:

Affirmative—Aldermen Seery, Shandley, Southworth, and Strack—4.

Negative—The President, Aldermen Blessing, Deane, Gilon, Gross, Guntzer, Howland, Lysaght, McCarthy, Morris, Power, Purroy, Reilly, Robinson, and Simonson—15.

Alderman Reilly offered the following:

4269

Resolved, That so much of the report of the Rapid Transit Commissioners as relates to the New York Elevated Railway Company be now adopted.

Alderman Purroy raised the point of order, that that resolution embraced but one subject, and could not be divided.

The President ruled the point of order to be well taken.

The President then put the question whether the Board would agree to adopt the resolution offered by Alderman Deane.

4270 Which was decided in the negative by the following vote (a majority of all the members elected not voting in favor thereof), on a division called by Alderman Deane, viz.:

Affirmative—The President, Aldermen Blessing, Deane, Gilon, Gross, Howland, Lysaght, McCarthy, Morris, Purroy and Simonson—11.

Negative—Aldermen Guntzer, Power, Reilly, Robinson, Seery, Shandley, Southworth, and Strack—8.

4271 Alderman Reilly asked to be excused from voting.

The President put the question whether the Board would agree to excuse Alderman Reilly from voting.

Which was decided in the negative, on a division called by Alderman Morris, viz.:

Affirmative—The President, Aldermen Blessing, Gilon, Guntzer, Lysaght, McCarthy, Power, Purroy, and Seery—9.

Negative—Aldermen Deane, Gross, Howland,
4272 Morris, Robinson, Shandley, Simonson, Southworth, and Strack—9.

Alderman Purroy moved a reconsideration of the vote taken on the resolution offered by Alderman Deane.

The President put the question whether the Board would agree with said motion.

Which was decided in the affirmative.

Alderman Seery moved that the Board do now adjourn.

The President put the question whether the Board would agree with said motion.

4273

Which was decided in the negative by the following vote:

Affirmative—Aldermen Lysaght, Power, Reilly, Seery, Shandley, and Strack—6.

Negative—The President, Aldermen Blessing, Deane, Gilon, Gross, Guntzer, Howland, McCarthy, Morris, Purroy, Robinson, Simonson, and Southworth—13.

Alderman Deane moved that the Board take a recess for thirty minutes.

The President put the question whether the 4274
Board would agree with said motion.

Which was decided in the affirmative.

After recess. 9:15 o'clock.

Present: Hon. Samuel A. Lewis, President; Aldermen Andrew Blessing, William L. Cole, George B. Deane, Jr., Edward Gilon, Magnus Gross, John W. Guntzer, Henry E. Howland, Patrick Lysaght, William H. McCarthy, John J. Morris, Robert Power, Henry D. Purroy, John Reilly, John Robinson, Peter Seery, Edward J. Shandley, Stephen N. Simonson, Chester H. Southworth. 4275

Motions again resumed.

Alderman Deane moved that the Board now resume consideration of the resolution offered by him consenting to the routes for rapid transit, submitted to the Board today by the Commissioners of Rapid Transit, which was lost, reconsidered, and, pending the further action thereof, the Board took a recess.

The President put the question whether the Board would agree with said motion.

Which was decided in the affirmative.

4276 Alderman Deane then moved the adoption of the resolution.

Alderman Shandley called for the reading of the report of the Commissioners.

While the paper was being read, Alderman Howland moved that the further reading of the paper be dispensed with.

The President put the question whether the Board would agree with said motion.

Which was decided in the affirmative.

The President then put the question whether the
4277 Board would agree to adopt the resolution offered by Alderman Deane.

Which was decided in the affirmative by the following vote (a majority of all the members elected voting in favor thereof):

Affirmative—The President, Aldermen Blessing, Cole, Deane, Gilon, Gross, Howland, Lysaght, McCarthy, Morris, Purroy, and Simonson—12.

Negative—Aldermen Guntzer, Power, Reilly, Robinson, Seery, Shandley, and Southworth—7.

Alderman Lysaght asked to be excused from vot-
4278 ing, but he subsequently withdrew the request.

Alderman Simonson moved that the Board do now adjourn.

The President put the question whether the Board would agree with said motion.

Which was decided in the affirmative.

And the President announced that the Board stood adjourned until Tuesday, the 14th inst., at 2 o'clock P. M."

Very respectfully Francis J. Twomey, Clerk.

Two hours were spent by the Commissioners in general discussion, with Messrs. Newton and

4279

Shreve, Engineers to the Board, of the several models and plans of construction heretofore submitted.

Upon motion of Mr. Mott, seconded by Mr. Canda, it was

Resolved, That the Commissioner of Public Works be and hereby is requested to furnish a statement of the grades, and of the width of each of the streets and sidewalks, along the routes heretofore determined and located by this Board.

Upon motion of Mr. Canda, seconded by Mr. Delamater, it was

4280

Resolved, That the Engineers of the Board be and hereby are authorized to employ a draftsman, with the understanding, however, that the person so employed shall be entitled to be paid by the Board only in the event that the Engineers themselves shall be entitled to be paid as heretofore provided in the Resolutions employing them.

Upon motion of Mr. Delamater, adjourned to the 10th inst., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

4281

City of New York, Office of the Board, New Court-house.

Friday, September 10, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—Four of the Commissioners, viz.: The President, Lewis B. Brown, Jordan L. Mott, and Charles J. Canda.

In the absence of Mr. Harrison, Mr. Canda was requested to act as Secretary of the meeting.

4282

Upon motion of Mr. Brown, the reading of the minutes was dispensed with.

The Board listened to an argument of Mr. Peter Cooper in favor of an endless train Railway proposed to be propelled by an endless chain with stationary engines.

Communications from various persons were received, read, numbered and filed.

Upon motion of Mr. Brown, adjourned to Tuesday, September 14, 1875, at 12 o'clock M.

C. J. Canda, Acting as Secretary of the Meeting.

4283

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Tuesday, September 14th, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

4284

In the absence of Mr. Harrison, Mr. Canda was requested to act as Secretary of the meeting.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

A communication accompanied by plans of construction, submitted by the New York Elevated Railroad Company, was, upon motion, referred to the Engineers of the Board, with instructions to report as soon as possible.

On motion of Mr. Brown, adjourned to Wednesday, September 15, 1875, at 12 o'clock M.

C. J. Canda, Acting as Secretary of the Meeting.

4285

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Wednesday, September 15, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—Four of the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, and Charles J. Canda.

4286

In the absence of Mr. Harrison, Mr. Canda was requested to act as Secretary of the meeting.

Upon motion of Mr. Delamater, the reading of the minutes was dispensed with.

Communications were received from various persons, read, considered, numbered and filed.

Mr. F. A. Williams, Mr. Bartlett and Mr. Gomez, were heard, each relative to his plans of construction. Mr. Stebbins, also, urged the Commissioners to adopt Mr. Williams' plan.

Upon motion of Mr. Delamater, seconded by Mr. Brown, it was

4287

Resolved, That Mr. Harrison, Counsel to the Board, be and hereby is requested to give his opinion in writing relative to the duties of the Commissioners under section 5, chapter 606, Laws of 1875; particularly as to whether the plans to be decided upon for the construction of railways must be described in detail, or whether they can be indicated in general terms.

Upon motion of Mr. Delamater, seconded by Mr. Brown, it was

Resolved, That Mr. Harrison, Counsel to the Board, be and hereby is requested to give his opin-

4288 ion in writing as to whether the fracks of a horse car railroad, now occupying any street or avenue along which a rapid transit railway is to be constructed, can be removed; and whether, if so removed, such tracks must be restored to the condition in which they were previous to the construction of the rapid transit railway, or may be made to accommodate the location of the latter, provided that the horse car railroad is not permanently obstructed.

4289 Mr. Harrison was authorized to consult, as to each of those matters, such special counsel as he may prefer.

Upon motion of Mr. Brown, adjourned to Thursday, September 16th, 1875, at 12 o'clock M.

C. J. Canda, Acting as Secretary of the Meeting.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Thursday, September 16, 1875—12 o'clock M.

4290 The Board met, pursuant to adjournment, at 12 o'clock M.

Present—Four of the Commissioners, as follows: The President, Lewis B. Brown, Cornelius H. Delamater, and Charles J. Canda.

In the absence of Mr. Harrison, Mr. Canda was requested to act as Secretary of the meeting.

Upon motion of Mr. Delamater, the reading of the minutes was dispensed with.

The Engineers not being ready to report, as was expected, the Commissioners spent some two hours in discussion, among themselves, of the plans of construction heretofore submitted.

4291

Upon motion of Mr. Delamater, adjourned to Friday, September 17, 1875, at 12 o'clock M.

C. J. Canda, Acting as Secretary of the Meeting.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Friday, September 17, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

4292

Present—Four of the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, and Charles J. Canda.

In the absence of Mr. Harrison, Mr. Canda was requested to act as Secretary of the meeting.

Upon motion of Mr. Brown, the reading of the minutes was dispensed with.

The Board listened to a long argument by Mr. Melville C. Smith, in favor of Mr. W. J. Morris' plan for an open-cut or depressed railway.

General specifications for construction (the result of a conference between the Engineers of the Board and those of the New York Elevated Railroad Company and Gilbert Elevated Railway Company) were presented and discussed. 4293

Upon motion of Mr. Brown, adjourned to Monday, September 20, 1875, at 12 o'clock M.

C. J. Canda, Acting as Secretary of the Meeting.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Monday, September 20, 1875—12 o'clock M.

4294

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

In the absence of Mr. Harrison, Mr. Canda was requested to act as Secretary of the meeting.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

Upon motion of Mr. Mott, seconded by Mr. De-

4295 lamater, it was

Resolved, That the opinion in writing of Mr. Harrison, Counsel to the Board, be and hereby is requested on the following question:

The Board having located a route of Rapid Transit Railway coinciding with the route of the Gilbert Elevated Railway Company, may they, after deciding upon plans for construction of the railway there, leave it to the Gilbert Elevated Railway Company to build the railway under the special charter of that Company, subject only to the conditions and requirements already imposed by this

4296 Board? Or is it necessary for this Board to determine upon the amount of capital stock required for construction and maintenance of the railways there, and to organize a new Company for that route, under the provisions of sections 6 and 7 of chapter 606, Laws of 1875?

Mr. Harrison was authorized to consult, upon those matters, such special Counsel as he may prefer.

Upon motion of Mr. Delamater, adjourned to September 21, 1875, at 1 o'clock P. M.

C. J. Canda, Acting as Secretary of the Meeting.

Board of Commissioners of Rapid Transit, City of New York, Office of the Board, New Courthouse.

Tuesday, September 21, 1875—1 o'clock P. M.

The Board met, pursuant to adjournment, at 1 o'clock P. M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Brown, the reading of the minutes was dispensed with. 4298

Further communications were received, read, considered, numbered and filed.

Mr. Richard P. Morgan, Jr., had a further hearing before the Board, and explained his plans of construction at great length.

Mr. Kirkup and Mr. Barnum had a hearing before the Board, and explained the plans of construction proposed by the former.

Mr. Courtright submitted, and Mr. Scott explained, specifications for plans of construction proposed by the New York Elevated Railroad Company. 4299

Messrs. Navarro, Alexander and Lowrey attended before the Board in behalf of the Gilbert Elevated Railway Company, and were notified to cause to be submitted, at as early a date as practicable, any specifications desired by that Company to be proposed as to plans of construction.

The Secretary laid before the Board the following communication from the Commissioner of Public Works:

4300 *Claimants' Exhibits.*

Department of Public Works, New York, September 11, 1875.

Burton N. Harrison, Esq., Acting Secretary Rapid Transit Commission:

Sir—I have the honor to acknowledge the receipt of the resolution adopted by the Board of Commissioners of Rapid Transit on the 8th inst., directing their engineers to communicate with me, and requesting me to furnish them with the grades and width of the streets and sidewalks on which
4301 the Board have designated routes of Rapid Transit Railways.

In reply, I respectfully submit that there are no official maps or data showing the grades and street lines in the older part of the city, below Fourteenth street, and the facts will have to be ascertained by actual surveys by the engineers of the Board.

Of the part of the Island from 14th to 155th street, however, there is sufficient material on hand to furnish the desired information, although there is no general map or plan, embodying all the details to the present day. The several maps, plans
4302 and documents comprising this information are open to the examination of the engineers of the Board.

With the assurance of my earnest desire to give the Commissioners all possible assistance within my authority,

I am yours, very respectfully, Fitz John Porter, Commissioner of Public Works.

Mr. Harrison submitted the following opinion of counsel as to questions upon which advice was heretofore asked by the Board:

The Commissioners of Rapid Transit propose the following question:

4303

The Commissioners having located a route of rapid transit coinciding with the route of the Gilbert Elevated Railway Company, and having fixed plans of construction, may they refrain from going further, and leave the Gilbert Elevated Railway Company to carry out the construction under the special charter of that Company, subject only to the requirements already made by the Commissioners? Or, is it necessary to fix and determine the amount of capital stock necessary for the construction and maintenance of the railways to be constructed there, and to organize a company on 4304
that route, under sections 6 and 7 of the act?

According to the general scheme of the act, the first thing the Commissioners were to do, after determining upon the necessity of railways of the kind contemplated, was to fix and determine the routes of such railways. Then they were to choose the plans of construction, and fix the time within which the road should be constructed, the rates of transportation, etc.

The next questions in order are: who is to build the road, with whom may the Commissioners deal, as responsible contracting parties, and by what 4305
arrangement may their performance of the work be secured? The Act provides that the Commissioners may organize a corporation, and determine the amount of its capital stock, and the percentage thereof to be paid to the Commissioners upon subscription.

This secures a corporate body with whom to treat, and subscriptions made to stock and partially paid in, as a guaranty of good faith.

But the Gilbert Elevated Railway Company was a corporation already in existence, chartered by the Legislature, for the same objects for which the

4306 powers conferred upon the Commissioners were granted, and §36 provides that "whenever the route or routes, determined upon by the Commissioners coincide with the route or routes covered by the Charter of an existing corporation, formed for the purpose provided for by this act * * * such corporation shall have the like power to construct and operate such railway or railways, upon fulfilment of the requirements and conditions imposed by said Commissioners, as a corporation specially formed under this act."

4307 Here negotiation and arrangement is provided for, between the Commissioners and the existing Corporation. Whatever may be the limitations in its charter, it may acquire from the Commissioners all the powers given by this act to corporations specially organized under it. But the Commissioners are not to grant these powers absolutely; they are to impose certain requirements and conditions.

What conditions shall the Commissioners impose? This is manifestly a matter within their own discretion. So long as they are dealing with

4308 individuals who are desirous of obtaining privileges from them, the act says the Commissioners must not stop until such parties have organized as a corporation, subscribed to the necessary capital, and paid in a percentage of such capital to be fixed by the Commissioners.

But, in dealing with a corporate body already in existence, and capable of contracting, it is not necessary to follow all the provisions applicable to the case of a corporation to be organized by the Commissioners. The course pointed out by the act for the Commissioners in setting on foot a new corporation is only important as a guide to their duties in dealing with this Company.

4309

That course looks to securing a sufficient capital, evidenced by actual subscriptions, a percentage of which the Commissioners may require to be paid up in cash. The capital of the Gilbert Elevated Railway Company is fixed by its charter at $3,500,000. Is this sufficient? Has any portion of it been subscribed? These are questions that bear on the safety of dealing with the Company, in reference to the power of enforcing against it effectually the engagements it may make with the Commissioners.

In respect to "the requirements and conditions" to be imposed in dealing with an existing company, we think the Commissioners are unfettered. If its capital is insufficient, if but little of it has been subscribed for, if none has been paid in, it is quite clear that it would not be prudent to hand over large powers to such company without making sure in some way that they will be faithfully exercised. The act provides a way in which such security may be obtained, by giving to the Commissioners the right to impose requirements and conditions when they confer on the company the powers with which they are intrusted.

4310

But it does not restrict them as to the character of these conditions. We think they are to judge, as business men, of the proper requirements and conditions to be imposed, the end to be attained being the performance by the company of its undertakings with the Commissioners.

4311

New York, September 21, 1875. S. P. Nash, Burton N. Harrison.

Mr. Harrison submitted also the following opinion of Counsel as to other questions upon which advice was heretofore desired by the Board:

The Commissioners appointed under chapter 606

4312 of the Laws of 1875, have requested an opinion as to their duties under section 5 of the act, and particularly as to whether the plans to be decided upon for the construction of the railways must be described in detail or whether it can be done in a general way.

This section is very general in its provisions, and the question put by the Commissioners is also very general. While it might be comparatively easy to say whether any plan submitted to the Commissioners was sufficiently specific to meet the require-
4313 ments of the act, it is not so easy to prescribe rules in respect to supposed plans which may be simple or complicated. But some general considerations may be of service.

The authority entrusted to the Commissioners, in reference to the choice of plans, was given in order to insure the execution of the plans.

In order to secure the end in view, rapid communication over the route of the railway, with the greatest security and convenience to passengers, and the least detriment to other interests, the Commissioners are to judge of and decide upon
4314 the plans.

As they are required to invite the submission of plans, it is implied that they are to select from a number, adopting one or more, with or without modifications. The act contemplated that the grant of authority to construct the road shall make sure that the plan adopted by the Commissioners shall be adhered to by the Railway Company. This appears from the 7th section of the act, which provides that the Articles of Association (if the road be built by a corporation organized by the Commissioners) shall contain the "conditions, requirements and particulars by said Commissioners de-

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termined pursuant to sections four, five and six," that is to say, the conditions as to the route, as to the plan of construction and as to the time of completion, etc., and shall provide for forfeiture if the road be not completed according to such conditions. And if, under section 36, the Commissioners award any privileges to existing Companies, it was evidently contemplated that they should so frame the grants as to secure the performance of any conditions and requirements as to plans, which they might deem it proper to impose.

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Assuming, then, that the road, by whomsoever built, is to be constructed according to the plans adopted by the Commissioners, and that Company is to be held to the performance of its undertakings in respect to plan of construction, it is plain that the plans adopted by the Commissioners should be so described as to specify every particular which the Commissioners deem essential. They should be so described that, in case of any proceeding, either to compel the Company to fulfil its undertaking, or to forfeit the franchise for non-fulfilment, a Court could say without difficulty whether the plans had been fairly carried out.

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Again: In case of a complaint against the Company for not adhering to and carrying out the plans and requirements of the Commissioners, the question what their plans and requirements were ought to depend upon written instruments, as maps, drawings, and specifications, and the charter, or other form of contract adopted by the Commissioners for conferring their grant upon the Company. Oral evidence as to what was understood between the parties would probably be shut out.

4318 The section under consideration enumerates some particulars which the Commissioners are to take into consideration under the general head of plans, viz.: "Supports, turnouts, switches, connections, landing places, stations, buildings, platforms, stairways, elevators, telegraph and signal devices, and other requisite appliances."

The act does not require that the Commissioners must provide for all these particulars, but, as far as they do provide for them, they should provide for them with proper distinctness.

4319 Upon this review of the act, the best answer that we can give to the general question of the Commissioners is that the plans adopted should embrace all the particulars which they deem important to secure the safety of passengers, their comfort and convenience, and the protection of the neighborhood traversed from needless damage or annoyance; and that the plans so adopted should be described in all their essential features so definitely that, in case of any legal dispute arising, competent engineers could, by comparing the road as constructed with such plans, and without re-

4320 sorting to oral testimony of understandings had between the parties, say whether the Railroad Company had substantially performed the requirements of the Commissioners in respect to the plans of the road. The Company undertaking the construction should not be in a position to escape any obligation assumed by it upon the plea that nothing on that subject was contained in the description of the plans.

The Commissioners also desire an opinion as to whether the tracks of the horse railways, occupying streets and avenues on which Rapid Transit Railways are to be constructed, can be removed,

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and, if so removed, must they be restored to the condition in which they were previous to the construction of the Rapid Transit Railway, or may they be made to accommodate the location of the Rapid Transit Railway, provided, that their practical operation and working is not impaired.

This question involves a construction of section 35 of the act, which authorizes the Rapid Transit Railway "to remove, for the purpose of constructing" the work, the tracks of the horse-car railways, but the same, the act goes on to provide, must "be done in such manner as to interfere as little 4322 as possible with their practical operation or working, and, upon the construction of said railway, where such removal or changes have been made, the same shall be restored, as near as may be, to the condition in which they were previous to the construction of said railway."

This means, we think, that the tracks of the horse railways can only be disturbed during the construction of the transit railway, and so as to interfere, during this period, as little as possible with their operation, and that when the transit railway is built, the tracks of the horse railways are 4323 to be restored to their former condition as near as may be. In our opinion, this language does not authorize any change in the route or line of the tracks of the horse railway. These tracks cannot be made by any deviation of course to accommodate the location of the transit road. They may be disturbed, but must be restored. They must be restored to their former condition, not absolutely, it is true, but as near as may be, considering that they have been disturbed.

This, perhaps, is construing the language of the act strictly, but it will, so far as it interferes with

4324 existing rights and privileges, be so construed by the Courts.

Subdivision 5 of section 26 provides that the corporations organized under the act shall have power to enter upon the streets for the purpose of constructing their roads, but prohibits them from erecting piers or supports upon a railway track "now actually in use in any street or avenue."

And section 35 prohibits any such corporation from using the tracks of any horse railway. Section 36 does not, in our opinion, give any greater
4325 powers in this respect to the existing corporations referred to in it, than are given to the corporations organized under the act.

The powers of the Commissioners over existing railways are only those given by the act. The Commissioners cannot give the horse railways any other track or line than the one actually in use, and we think that they cannot authorize a rapid transit road, for the accommodation of its location, to place the track of any horse railway in any other place than that it already occupies.

New York, September 20, 1875.

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S. P. Nash.
Burton N. Harrison.

After discussion by the Commissioners with Messrs. Newton and Shreve, Engineers, of various plans of construction heretofore submitted, the Board, upon motion of Mr. Mott, adjourned to the 22d inst., at 1 o'clock P. M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

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Wednesday, September 22, 1875—1 o'clock P. M.

The Board met, pursuant to adjournment, at 1 o'clock P. M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

Mr. Harrison submitted to the Board the following opinion of Hon. James Emott, Special Counsel, upon questions as to which the Commissioners heretofore desired to be advised:

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The Commissioners appointed in the City of New York, under chapter 606 of the Laws of 1875, were directed first to determine whether a steam Rapid Transit Railway is necessary in that city. Having decided that it is necessary, they were next, and within sixty days from their organization as a Board, to fix and determine the route or routes upon which such railways shall be built. Then they are required to complete the preliminary work for the construction of the railway or railways, which they have determined to be needed and have located—first, by establishing the plan and method of construction according to which such railway or railways must be built; second, by fixing the time within which these railways must be completed and ready for operation, and third, by fixing the mode of operating the roads when completed, the rates of fare, and the hours of the day when cheap trains shall be run over the roads. When these necessary preliminaries are settled and established, the period will be reached for finding or calling into existence the

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4330 agencies by which the road or roads for rapid transit are to be constructed. The act, therefore, proceeds to provide for creating a corporation or corporations to build and operate whatever roads may be authorized and directed by the Board. The Commissioners are authorized to organize whatever corporate bodies are necessary for that purpose, and to make their requirements as to the construction and operation of the roads part of the fundamental law of these bodies. The act then gives to them corporate character and succession.

4331 But section 36 of the act contains a provision for the case where there is in existence a corporation formed for the purpose of building a Rapid Transit road, the charter of which authorizes it to build such a road upon a certain designated route, and the privileges and franchises of which have not been forfeited or impaired—and where the Commissioners have adopted and directed the construction of a railway upon the precise route on which such existing corporation is authorized to build.

4332 The act provides that, in that event, such existing corporation shall have the like power to construct and operate such railway, as a corporation specially formed under the act, upon fulfillment of the conditions and requirements imposed by the Commissioners.

The Rapid Transit Commissioners for New York have located a route of railway exactly and entirely coincident with the route of the Gilbert Elevated Railway Company, a corporation which is in full possession of its corporate privileges and franchises; and, being ready to fix the plan of constructing and operating such road, the question

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arises: Is it the duty or within the power of the Commissioners to proceed according to the act, to organize a new corporation for the purpose of building and operating a Rapid Transit Road upon this route?

It is plain that but one corporation is to be organized or authorized to proceed under this statute —but one at least for each particular route. There is no intention evinced of having any competition between different corporations for the privileges of the act, and no method is provided for deciding any competitive claims for the right to build a railway upon any route selected by the Commissioners. The selection of the route, and the manner of constructing and operating the railway are first to be determined by the Commissioners. If they decide that the public interests require the construction of a railway upon a route not covered by the charter of any existing company, they are to call into existence a new corporation which shall be authorized to construct and operate this road. But if they decide, as they have done in the present instance, that the route upon which an existing corporation is already authorized by law to build a rapid transit road, is the best, or one of the best, for the public interests, the 36th section of the act explicitly provides that such existing corporation shall have the same power to build and operate such railway as would a corporation created under the act of 1875 to build such a railway upon a route not covered by any charter or grant to an existing corporation.

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I can see no reason to doubt that this provision puts the Gilbert Elevated Railway Company in the same position, with respect to the route covered by their charter and selected by the Commissioners

4336 under the Act of 1875, which would be held by a new corporation, called into being *pro hac vice* under the act, if the route were a new route. The statute, in the event, which has occurred, of the selection of the route of an existing company, has the effect of conferring upon that corporation the right to build and to operate its road upon that route, subject and according to the provisions of the act. It certainly cannot be intended that a new and rival corporation should be organized by the Commissioners to construct a road, which there is
4337 already a company authorized to build, or to enter into a controversy with the elder corporation for the possession of the privileges and franchises conferred by this act. There is to be but one corporation organized or authorized for the construction of each particular line of road, and where any such line coincides with the route of an existing company, that company must be the company to build and operate the road, and no new corporation need be created for that purpose.

The Act of 1875, however, provides that this corporation shall have power to construct and operate
4338 such railway, upon fulfillment of the conditions and requirements imposed by the Commissioners. The question is presented, to what conditions and requirements does this refer. Are the Commissioners to fix the amount of the capital stock of the Gilbert Elevated Railway Company, or of the company to build the railway on their route, the number of its shares, or the percentage to be required to be paid upon them? I think clearly not. This would be to interfere with and modify the charter of an existing corporation, and to reconstruct its existing organization. These are powers which I cannot suppose it was intended to give to these

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Commissioners. These provisions of the act refer to new corporations to be brought into being to construct railways on new routes. But there are conditions and requirements which attach to and are necessary for the operation and maintenance of any rapid transit road, and the act means to give the establishment of these conditions and requirements for the benefit of the public to the Board of Commissioners which it creates.

I am clearly of opinion that the Gilbert Elevated Railway Company is authorized by the 36th section of this act, under its present charter and organization—without modification by any interference of the Commissioners, in regard to its capital stock, payments, shares or the like—to build and operate a railway upon the route defined by its charter and selected by the Commissioners, provided it builds and operates the railway in the manner directed by the Commissioners. The Commissioners are not required, in my judgment, so far as that route is concerned, to proceed to organize a new corporation. They must, however, establish the plan and method of constructing the road to be operated on this route, limit the time within which it must be completed, and fix the rates of fare and the hours for running cheap trains upon it. To all these conditions and requirements the Gilbert Elevated Railway Company may and must conform, in order to entitle itself to the privileges of this act.

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New York, September 22, 1875. James Emott.

Mr. Jonas Levy appeared before the Board, and was heard, advocating the plans of construction proposed by Mr. Catherwood.

Mr. Anson Atwood appeared before the Board,

4342 and was heard in explanation of his own plans of construction.

Messrs. Navarro, Alexander, Lowrey and Foster were heard with reference to specifications proposed by the Gilbert Elevated Railway Company; and Mr. Scott was heard with reference to specifications proposed by the New York Elevated Railroad Company.

Mr. C. K. Garrison was heard with reference to what has been called a "depressed" or "open cut" railway, urging the Board, in deciding upon plans
4343 of construction, to allow an option to the Company to build the road either above or below the surface of the streets, as may be found preferable in practice.

Mr. Harrison was asked, as the Counsel to the Board, for advice in the premises, and expressed the opinion that the Commissioners, having determined and located the routes in the terms employed in the resolutions of the 2d and 3d inst., have not now the power to decide upon a "depressed" or "open cut" plan of construction for a railway upon either of those routes; remarking,
4344 however, upon the fact that the question is new and important, he requested time for consideration and for consultation, after hearing first what may be said on the subject by Counsel for the advocates of the "depressed" or "open cut" plans.

The Commissioners then spent some time in further discussion with Messrs. Newton and Shreve, Engineers, particularly as to the distances at which it may be proper to require the columns supporting an elevated railway to be placed.

Upon motion of Mr. Canda, adjourned to 23d inst., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

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City of New York, Board of Commissioners of Rapid Transit.

Office of the Board, New Court-house.

Thursday, September 23, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

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Upon motion of Mr. Canda, the reading of the minutes was dispensed with.

Communications from various persons were received, read, considered, numbered and filed.

Messrs. Peter Cooper, Alfred Speer, Foster, Navarro, C. K. Garrison, Alexander, Lowrey, John K. Porter, Scott, and others, attended before the Board.

Messrs. W. J. Morris, Melville C. Smith, S. E. Church and Henry C. Gardiner appeared before the Board, and had a protracted hearing in explanation and advocacy of a proposed "depressed" or "open cut" railway.

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Mr. Harrison, Counsel to the Board, was requested to attend with Messrs. Emott and Nash, Special Counsel, at the meeting to be held tomorrow, then to hear argument by Counsel advocating the adoption by the Board of a plan for construction of the kind of railway above referred to, and to advise the Commissioners as to their powers in the matter, at this stage of proceedings.

Upon motion of Mr. Mott, adjourned to the 24th inst., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

4348 *Claimants' Exhibits.*

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Friday, September 24, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

4349 Upon motion of Mr. Brown, the reading of the minutes was dispensed with.

The President laid before the Board the following communication from the Common Council:

Office of the Clerk of the Common Council, New York, September 23, 1875.

To the Honorable the Commissioners of Rapid Transit:

Gentlemen—I have the honor to transmit herewith, for your information, a copy of a Resolution adopted today by the Board of Aldermen.

4350 Very respectfully, F. J. Twomey, Clerk of the Common Council.

The Resolution refered to is as follows:

Resolved, That in selecting plans for the erection of a rapid transit railroad, the Commissioners be and they are hereby respectfully requested to reject any and all plans which may contemplate the construction of such roads over the sidewalk in any street, avenue, or public place in the City of New York, and that in the consideration of such plans, preference be given to the one that provides

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for the erection of such railroad over the centre of the carriageway, and that may present the least impediment to the public uses of the carriageway of every such street, avenue, or public place.

Mr. Harrison, of Counsel to the Board, and Messrs. Emott and Nash, Special Counsel, attended the meeting in compliance with the request made by the Commissioners at yesterday's meeting. And Messrs. John K. Porter, Grosvenor P. Lowrey, Henry M. Alexander and Ashbel Green, for the Gilbert Elevated Railway Company, and F. J. Fithian, Esq., for the New York Elevated Rail- 4352
road Company, attended the meeting, and had protracted hearings in advocacy of not only the preference of their clients for an option as to construction of either an elevated or depressed railway, but of also the opinion expressed by them that, under the provisions of chapter 606, Laws of 1875, it is now within the power of the Board to decide upon a plan of a depressed railway, to be constructed upon the routes heretofore determined upon, and, in the Resolutions of the Board of the 2d and 3d instant, described.

After long discussion between said Counsel, 4353
Messrs. Emott, Nash and Harrison were desired by the Board to submit to the meeting to be held on the 27th inst., opinions in writing, advising the Commissioners as to the questions of law which had been discussed.

Upon motion of Mr. Brown, adjourned to the 25th inst., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

4354 *Claimants' Exhibits.*

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Saturday, September 25, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—Four of the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, and Charles J. Canda.

4355 Upon motion of Mr. Brown, the reading of the minutes was dispensed with.

Communications were received from various persons, read, considered, numbered and filed.

Some time was spent by the Commissioners in discussion, among themselves and with the Engineers of the Board, of the various plans of construction heretofore proposed.

Upon motion of Mr. Delamater, adjourned to 27th inst., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

4356 Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Monday, September 27, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Brown, the reading of the minutes was dispensed with.

Communications were received from various persons, read, considered, numbered and filed.

Mr. Harrison submitted the opinion of the Counsel and Special Counsel to the Board, upon questions heretofore referred to them for advice—both Mr. Emott and Mr. Nash being in attendance upon the Board when the opinion was read. It is as follows:

The following question, arising under chapter 606, Laws of 1875, is proposed by the Commissioners:

The routes fixed, determined and located by the 4358
Board of Commissioners, are described as "over, through and along" the streets. Can the Board, under the provisions of section 5 of the act, decide upon a railway to be underground, or in places underground and in other places in an open-cut, as a plan of construction of a railway upon the route or routes and in the locations already determined? Can an underground, or partly underground and partly open-cut railway, constructed "under, through and along" a street, be called a plan of construction upon a route described as "over, through and along" a street? 4359

Section 4 of the act required the Commissioners, within sixty days after their organization, to "fix and determine the route or routes" for the steam railways intended by that section of the act and which they had previously determined to be necessary. Within the time limited, they adopted four resolutions; two prescribing routes, under section 36, for the New York Elevated Railroad Company and the Gilbert Elevated Railway Company, respectively, and two prescribing routes for a new corporation or corporations to be organized under the act.

Section 5 provides that, within thirty days thereafter, the Commissioners shall, after having "invited the submission of plans for the construction and operation of such railway or railways * * * decide upon the plan or plans for the construction of such railway or railways, with the necessary supports, turnouts, switches * * * or other requisite appliances upon the route or routes, and in the locations determined by them."

In determining the routes they adopted, the Commissioners had in view only roads to be built
4361 above the surface of the streets, none others were considered practicable. But, during the thirty days allowed for the consideration of plans, proposals have been made for the construction of roads below the surface, substantially such as are known as underground roads, and this has given rise to the question submitted: Can the Commissioners now decide upon any other plan of road than one elevated above the surface—to be constructed upon a route already determined and prescribed for a railway intended by section 4 of the act?

It has been suggested that the limitation of sixty
4362 days, in section 4, is only directory, and that the Commissioners are still free to modify the language of their resolutions, if this be necessary, in order now to sanction any other than an elevated road, upon the routes and in the locations already determined. We cannot agree to this view. Conceding that the limitation may be considered so far directory that, in a case in which the Commissioners had not acted at all within the sixty days, they might act afterwards—we are of the opinion that, having in fact acted, their powers, as to what they have actually done in respect to what the law required to be done within the sixty days,

are exhausted. They can now no more modify the resolutions adopted in compliance with the provisions of section 4, than adopt entirely new ones as to matters determined under those provisions.

The question remains, have the Commissioners concluded themselves by their description of their routes as "over, through and along" certain streets?

If the proper construction of the act is made to depend upon the meaning given to certain expressions in it, an answer to the question will be very difficult. On the one hand, the description of the 4364
route as over certain streets, or under them, may be considered as determining the character of the road, as an underground road cannot be run over the streets, nor an elevated road under them. On the other hand, the route might have been described as a mere line from one terminus to the other, running over or under the streets as might subsequently be determined; and then the question, what kind of road was to be built, would have come under the head of plans of construction, as to which the Commissioners had thirty days more to determine. But section 4 not only 4365
requires the Commissioners to fix and determine the route or routes, but goes on to provide that they "shall have the exclusive power to locate the routes or routes of such railway or railways, over, under, through or across the streets," etc. This seems to imply that locating a route is something beyond the fixing and determining it, or that fixing and determining the route involves the determination whether the road shall have a route over, under or along the surface of the ground; and though this location of the route is not expressly required by this part of the section to be

4366 made within the sixty days, yet the provision seems to treat the question whether the road is to be elevated or under ground as belonging to the subject of routes, rather than to that of plans of construction.

And so, under section 5, the Commissioners are to decide upon the plan for the construction of the railways "upon the route or routes, and in the locations, determined by them."

Leaving the critical interpretation of the language of the act, little help in solving the difficulty can be derived from its general purport. It has been said that the object of laying out the route in the first instance was simply that land owners and other parties affected by it might be properly informed, and that capitalists might consider whether a road upon the route is feasible; but, in both these aspects it seems important that the route should be described as either over or under the streets. And it is well to consider that an elevated road involves only a temporary disturbance of the surface of the street, and causes no obstruction except that made by the supports; whereas, a road depressed below the surface involves a permanent appropriation of a portion of the street.

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Full effect, too, can be given to the provisions of section 5, allowing thirty days for the consideration of plans, by appropriating this period to determining the details of construction. Thus, while the question whether a road shall be elevated or under ground belongs to the subject of routes, the particular manner in which either an elevated or other road shall be built (embracing, among other particulars, as section 5 specifies them, "supports, turnouts, switches, sidings, connections, land-

ing places, stations, buildings, platforms, stairways, elevators, telegraph and signal devices, or other requisite appliances") belongs to the subject of plans of construction.

We do not, on the whole, feel so much embarrassed by the question whether, notwithstanding the terms they have used in describing the routes, the Commissioners might still adopt the plan of an underground road, as we do by the question whether an elevated road, and one below the surface, are not, within the provisions of the act, roads on different routes. The Commissioners have in 4370
fact, in their resolutions, designated the routes of elevated roads; they have thus treated the character of the road as belonging to the subject of routes. We are inclined to think that in so doing they have given the proper construction to the act, and that, in considering the question of plans of construction, they should now confine their attention to the plans for elevated roads. They will be more justified in this from the facts that: while they were considering the question of routes, no one having or controlling the necessary capital proposed to build any other than an elevated 4371
road; and that, if the Commissioners now undertake to sanction a road which would involve an appropriation of the surface of the streets, and the construction of a subsurface road, their action would be of such questionable legality as almost to invite litigation.

In conclusion, we agree in the opinion that, at this stage of their proceedings, to attempt to authorize the construction of a road to be built entirely or mainly under the surface, would be a

4372 proceeding of such doubtful legality that we cannot advise it.

New York, September 27, 1875.

James Emott, S. P. Nash, Burton N. Harrison.

Upon motion of Mr. Canda, seconded by Mr. Delamater, it was

Resolved, That the Secretary be and hereby is instructed to advertise in several newspapers of the city, a public notice, as follows:

4373 Board of Commissioners of Rapid Transit, City of New York.

Office of the Board of Commissioners of Rapid Transit, New Court-house, New York, September 27, 1875.

The Board of Commissioners appointed by the Mayor, under and in compliance with the provisions of chapter 606, Laws of 1875, hereby gives public notice that the submission of plans for the construction and operation of Rapid Transit Railways is hereby again invited; such plans must be shown by drawings or models, and accompanied by descriptions in writing, if descriptions are to be made; and the Commissioners will request the attendance before the Board of the person or persons submitting the plans which, in the opinion of the Board, have merit, and which require explanation and description more in detail than the description in writing accompanying the plans when submitted.

The Board of Commissioners hereby further gives notice that the Commissioners will meet at 12 o'clock M. on Monday, the 4th day of October, 1875, at the office of the Board, in the New Court-

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house, and decide upon the plan or plans for the construction of such railway or railways, with the necessary supports, turnouts, switches, sidings, connections, landing places, stations, buildings, platforms, stairways, elevators, telegraph and signal devices, or other requisite appliances upon the route or routes, and in the locations determined by them.

Joseph Seligman, President.

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After protracted discussion by the Commissioners, among themselves and with the Engineers of the Board, of the several plans of construction heretofore proposed, upon motion of Mr. Canda, adjourned to 28th inst., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Tuesday, September 28, 1875—12 o'clock M.

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The Board met, pursuant to adjournment, at 12 o'clock M.

Present—Four of the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, and Charles J. Canda.

Upon motion of Mr. Canda, the reading of the minutes was dispensed with.

Communications were received from various persons, read, considered, numbered and filed.

The Secretary reported that the advertisement yesterday ordered to be published is now appearing in several of the principal daily and other newspapers of the city.

4378 Mr. Alexander Brandon had a hearing before the Board as to plans of construction by him advocated.

Messrs. Navarro, Wilson, Alexander and others, of the Gilbert Elevated Railway Company, and Mr. Courtright, of the New York Elevated Railroad Company, had further hearings as to specifications of plans of construction—particularly in reference to the distances to be allowed between the supports of an elevated railway.

The Counsel of the Board, and Messrs. Emott
4379 and Nash, Special Counsel, being, by invitation, in attendance, were asked to submit, on the 30th inst., an opinion in writing as to the power of the Board, under the Constitution of the State, to authorize supports for an elevated railway to be erected in a street.

After protracted discussions by the Commissioners, among themselves and with Messrs. Newton and Shreve, Engineers to the Board, as to specifications to be insisted on in plans, upon motion of Mr. Brown, adjourned to 29th inst., at 11 o'clock A. M.

4380 Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Wednesday, September 29, 1875—11 o'clock A. M.

The Board met, pursuant to adjournment, at 11 o'clock A. M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

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Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

Communications were received from various persons, read, considered, numbered and filed.

Messrs. Ira Buckman, James E. Serrell, Clark and Roy Stone, appeared before the Board, and each of them had a hearing as to plans of construction advocated by him.

Messrs. Foster, Navarro, Wilson and Alexander, of the Gilbert Elevated Railway Company, and Mr. Courtright, of the New York Elevated Railroad Company, had further hearings as to specifications of structure.

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After two hours more spent by the Commissioners in further discussion with Messrs. Newton and Shreve, as to plans of construction, upon motion of Mr. Delamater, adjourned to 30th inst., at 11 o'clock A. M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

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Thursday, September 30, 1875—11 o'clock A. M.

The Board met, pursuant to adjournment, at 11 o'clock A. M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

Communications from various persons were received, read, considered, numbered and filed.

Mr. Harrison, Counsel to the Board, and Messrs.

4384 Emott and Nash, Special Counsel, were, by invitation, in attendance, and (after advising the Commissioners orally as to several questions arising under the law), submitted in writing the opinion requested on the 28th inst., which was read and is as follows:

With regard to the constitutional power of the Legislature to authorize the construction of an elevated railway for rapid transit through or over the streets of the City of New York—and to the question whether the erection of permanent supports in
4385 the middle of the carriageway in such streets for the track of such a railway, would be open to questions or objections which would not apply to similar supports upon the line of the curb stones and gutters—we beg to submit very briefly the following views:

We do not deem it necessary to discuss the question whether the Legislature possess the power to authorize the appropriation of so much of the streets of the city as may be necessary for the erection of some structure for a rapid transit railway. If that power were more doubtful than it
4386 appears to us to be, it would still be the duty of the Commissioners to perform their functions under this act, to indicate routes, and prescribe structures for the railways which they have declared to be necessary. If the Legislature, whose instruments and agents they are, have exceeded their authority in the powers which they have conferred upon them, that must be declared by the Courts. The Commissioners are clearly bound to discharge their duties, and leave the issue of such questions with the parties who may bring them before the proper tribunals, and to the decisions of such tribunals.

But if there be manifestly a constitutional objection to one kind of structure, or to placing pillars or supports in the middle of the street, which do not apply to another structure, or to placing such supports upon or at the edge of the present sidewalks—if there be even much more serious doubt as to the power of the Legislature to authorize the former rather than the latter of these courses of proceeding—it will be undoubtedly proper for the Commissioners to be influenced, and perhaps controlled, by these considerations in selecting a plan of construction. 4388

It is obvious that supports for an elevated railway along the middle of the roadway of a street will be a greater obstruction to the public use of the street than supports placed along the line of the curb stones—greater in degree, but not different in kind. The portion of the street appropriated to the sidewalk is as much a part of the street as the roadway. Any obstruction or interference with the full use of the entire street for purposes of passage may be claimed to be a public nuisance, if unlawful. Although one kind of obstruction or erection in a street may be far more injurious than another to the public use, there is no difference in their legal aspect, in the power of the Legislature to authorize them, or in the right of the public authorities or of individuals to complain of them. Surface street railroads, operated by horse power, such as we now have in so many of our streets and avenues, have themselves been alleged to be such obstructions as would be nuisances were they not lawful. Structures to support an elevated railway may, of course, be challenged, and those who attempt them will be compelled to show due and 4389

4390 constitutional authority for what they attempt. But we see no more difficulty in showing such authority for placing such structures in the middle of the street than for placing them on its side.

The choice between a railway supported by single posts placed on the edge of the sidewalk and one supported by two rows of columns erected at intervals in the carriageway, is a question of public interest and public convenience, to be decided by the Commissioners in their discretion, and not a question of the greater or less legal or con-

4391 stitutional power to erect one or the other structure.

We are of opinion that the Commissioners have power to authorize supports for a railway to be erected in the roadway, quite equal to their power to authorize supports to be placed for a railway upon or along the sidewalk.

New York, September 29, 1875.

James Emott,
S. P. Nash,
Burton N. Harrison.

4392 Messrs. Scott and Courtright appeared in behalf of the New York Elevated Railroad Company, and Gen. Wilson in behalf of the Gilbert Elevated Railway Company, and took part in protracted discussions by the Commissioners with the Engineers of the Board as to specifications of plans.

Messrs. W. D. Phillips, Abbiati and Vassel had a hearing, and explained a suspension girder plan of construction of great merit.

Upon motion of Mr. Canda, seconded by Mr. Delamater, Messrs. Emott, Nash and Harrison were requested to advise the Board on the 2d prox. as to several further questions arising under the law and which were stated to Counsel.

Upon motion of Mr. Canda, adjourned to 1st prox., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house,

Friday, October 1, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

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Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

Communications were received from various persons, read, considered, numbered and filed.

Three hours were spent by the Commissioners in further discussion with Messrs. Newton and Shreve, Engineers to the Board, and with Mr. Courtright and General Wilson, as to details and specifications of plans of construction.

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Upon motion of Mr. Brown, adjourned to 2d inst., at 11 o'clock A. M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house,

Saturday, October 2, 1875—11 o'clock A. M.

The Board met, pursuant to adjournment, at 11 o'clock A. M.

4396 Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

Communications from various persons were received, read, numbered and filed.

Mr. Nash, Special Counsel, was in attendance by invitation, and with Mr. Harrison advised the Commissioners orally as to several questions arising under the law.

4397 In compliance with the request made at the meeting held on the 30th ult., the opinion of Counsel as to questions then submitted for advice was laid before the Board in writing. It was read, and is as follows:

The question is proposed, whether the act of June 18, 1875, requires or authorizes the Commissioners to organize a separate corporation to build a railway upon each distinct route fixed and located by them, or whether they are to organize one corporation to build all the railways which they have located in the City of New York.

4398 The further question is also put, whether, if one corporation is created, it will answer the requirements of the 6th section and of the 7th section, to require this Company to complete, within the time to be defined by the Commissioners, a railway upon the prescribed plan, upon one of the routes, specifying which, or upon one or the other, giving the choice to the Company, and leaving the Company at liberty to neglect or abandon the route not indicated by the Commissioners, or selected by themselves, without incurring forfeiture of their franchise.

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It is proper to say with reference to many, if not most, of the questions which have arisen upon the power and duties of the Commissioners under this act, that it is difficult, if not impossible, for counsel to answer positively and confidently what is the meaning which the Courts will give to all the provisions of this act.

So far as we can find precedents or legal principles which can be applied to solve these questions, we may see our way to a result, with confidence in the correctness of our conclusions. But many questions have arisen under this act which are merely questions as to the meaning of words and phrases, and in which no rules of construction or interpretation can well be appealed to to settle our doubts. In such cases, the best that can or will be done by prudent counsel is to indicate the safest course—that which will avoid and prevent difficulties and questions—and to refrain from recommending methods which must compel the decision of questions which may be peculiar and doubtful.

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The rapid transit act is, as the Constitution requires it to be, a general law. It provides for the organization of many corporations, because it applies to every city and county in the State, and there may be a rapid transit railway in every city and county. Many of its provisions and expressions therefore refer to railway corporations organized under it in the plural, or as a class.

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The act also contemplates the construction and operation of more than one railway upon different routes in one city. It is easy to see that cities and towns may be so situated as to require such railways running in entirely different directions, and in separate parts of such cities. If New York were

4402 not as narrow as its insular site makes it, a rapid transit road from east to west might be as necessary there, as we all admit a north and south road to be. And so the act, we believe, in every place where the subject is referred to, carefully speaks of "route or routes," and of "railway or railways." It seems clearly intended that more than one route and structure may be authorized, and that in the same general direction or otherwise.

But when the act speaks of the Company to be organized to build these roads, it seems just as
4403 carefully to speak of but one Company in each city to construct all the railways upon all the routes indicated. The act always speaks of "route or routes," "plan or plans," "railway or railways." It as uniformly speaks of "the Company to be formed for the purpose of constructing and operating such railway or railways" (section 6), of "the corporation formed for the purpose of constructing and operating said railway or railways" (section 8), and of "the organization of the Company for the purposes of the act" (section 9). The term Company is used in the first eleven sections
4404 of the act, which contain the scheme for initiating the construction of Rapid Transit roads in any city, always in the singular number. Although this latter peculiarity might not of itself be conclusive on such a point as that we are considering, yet when it is coupled with the fact that, in the same sections and the same connection, the railways to be built by such company, and the routes indicated for them, are as carefully mentioned in both the singular and plural, speaking, as we have said, of railway or railways to be constructed by the company to be formed, and upon the route or routes which have been indicated by the Commis-

sioners, the implication is very strong that, while the act intends to allow the Commissioners to designate as many routes and to authorize as many railways as they consider necessary, it intends that they should form but one company in any city to build them all. 4405

At all events, to apply the considerations to which we adverted in the outset of this inquiry, we think there is nothing requiring the Commissioners to organize a distinct corporation for every railway they have located and authorized. It will be safe for them to organize one company to build them all. 4406 It may give rise to embarrassing questions if separate companies are formed to build the several roads contemplated. If the Commissioners should have fixed reasons, however, of a prudential or practical character, which they should consider constraining in favor of a separate organization for each railway and route which they have located, it may be proper to add that we see no reason why the corporation first authorized and organized, and first commencing the construction of one of these railways upon one of the selected routes, would not acquire and become vested as to that route, at least, with all necessary rights and franchises. 4407 If the construction of the act which we have indicated above be correct, it might be that the powers of the Commissioners in this respect would be spent by the organization of one corporation, and that they could give no vitality to a second. We do not see, however, that the corporate character of the first company could be justly challenged because it was not vested with all the powers which the Commissioners might have given it, or authorized to construct all the railways which they intended to have built. The

4408 result might be that the attempt to occupy the route given to the second corporation might fail altogether, but we can hardly see why the first organization should not acquire the power to build on the first route.

But if the Commissioners determine to organize only one corporation, may they limit their requirement, as to the time of completing the work directed, to a structure on one of the routes, and may they give to the Company a choice as to which they will build upon? We think they may. The
4409 law clearly authorizes them to apply the limit of time within which the construction must be completed to a portion of the railway authorized. They are not compelled to require the construction of the whole road, we think, within a specified time; they must, however, fix a period within which some portion, and of course it will be the most important and necessary portion of any railway they may authorize, must be completed upon pain of forfeiture. We see no reason why the portion thus selected for immediate completion, as a condition of retaining corporate rights, may not
4410 be the railway upon either separate distinct route.

We are also of opinion that the Commissioners may go still further, and may impose upon this single corporation the condition of constructing a railway upon one or the other of these routes within a specified time, leaving it in the alternative, and giving the choice of the alternative to the Company. We have already advised the Commissioners that they may decide upon alternative plans of structures, giving the choice to the Company which is to build the road, provided that each plan is, in their judgment, suitable and proper, so that either would answer all public ends, and each

would be a plan of construction decided upon by the Commissioners.

Following a similar analogy, we think the Commissioners may require the construction, within the time they fix, of one or the other of two portions of the railways they have defined, and so of the railway upon one or the other of two routes. The purpose, so far as the public is concerned, is to insure and compel the reasonably speedy construction of rapid transit roads, between such points and furnishing such accommodation to citizens, as are of most urgent necessity. This pur- 4412
pose the Commissioners, of course, will not fail to carry out to the extent of their power. But this may be accomplished by requiring the completion, within the specified time, of a rapid transit railway, between the upper and lower portions of the city, by one or the other of two or more defined routes, all equally acceptable to the Commissioners, and, in their judgment, equally conducive to the public interests.

October 1, 1875.

James Emott, S. P. Nash, Burton N. Harrison. 4413

Three hours were spent by the Commissioners in discussions, with the Engineers to the Board and with Mr. Courtright, as to specifications of plans of construction.

Upon motion of Mr. Brown, seconded by Mr. Delamater, it was

Resolved, That acting herein under the advice of Counsel the Board will organize but one Company under the provisions of chapter 606, Laws of 1875, and will cause a book of subscription to the Capital Stock of but one Company to be opened.

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Upon motion of Mr. Delamater, seconded by Mr. Canda, it was

Resolved, That the name to be specified in the Articles of Association of such Company shall be the "Manhattan Railway Company."

Upon motion of Mr. Mott, seconded by Mr. Canda, it was

Resolved, That the part of the railway or railways directed by the Commissioners to be first constructed by the Manhattan Railway Company
4415 is the part from Fifty-ninth street southwardly to the line of Chambers street, upon either of the routes to be covered by the articles of association, as may be elected by the Company.

Upon motion of Mr. Canda, seconded by Mr. Mott, it was

Resolved, That, in view of the fact that the law provides that the company organized under chapter 606, Laws of 1875, may increase its capital stock from time to time the capital stock of the Manhattan Railway Company be and hereby is fixed at two millions of dollars (being the amount
4416 proportioned to the part of the railway directed by the Commissioners to be first constructed by said Company), the said capital stock to be divided into twenty thousand shares, of the par value of one hundred dollars each; and

Resolved, Further: that five per centum of the par value of the number of shares subscribed for shall be paid in cash, by each subscriber, at the time of subscribing.

Upon motion of Mr. Brown, adjourned to the 4th inst., at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

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Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Monday, October 4, 1875—12 o'clock M.

The Board met, pursuant to adjournment, at 12 o'clock M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

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Upon motion of Mr. Canda, the reading of the minutes was dispensed with.

Communications were received from various persons, read, considered, numbered and filed.

Messrs. Foster, Alexander and Lowrey, with Generals Porter and Wilson, on behalf of the Gilbert Elevated Railway Company, and Mr. Courtright, on behalf of the New York Elevated Railroad Company, were in attendance upon the Board during the entire meeting, and took part in the discussions. Mr. Nash, Special Counsel, was also present, and advised the Board orally as to several questions of law arising.

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Upon motion of Mr. Canda, seconded by Mr. Mott, it was

Resolved, That whereas this Board of Commissioners did, by preambles and resolutions duly adopted on the 2d day of September, 1875, fix and determine the route or routes by which the New York Elevated Railroad, an elevated steam railway now and then in actual operation, may connect with other steam railways or the depots thereof or with steam ferries, by reason of which action said the New York Elevated Railroad Company, by and under the terms and provisions of chapter 606 of

4420 Laws of 1875—upon fulfillment by such Elevated Steam Railway Company, so far as it relates to such connections, of the requirements and conditions imposed by this Board of Commissioners and of such as, under section four of said act, are necessary to be fulfilled in such cases under section eighteen of article three of the Constitution of this State—shall possess all the powers conferred by section twenty-six of said act, and may construct such connections with all the rights and with like effect as though the same had been a part of the
4421 original route of such railway;

Now, therefore, this Board of Commissioners heseby specifically imposes upon the said the New York Elevated Railroad Company, its successors and assigns, the following requirements and conditions:

First.—The New York Elevated Railroad Company, its successors and assigns, shall construct the railway and railways to be constructed along and upon the route or routes of such connections as, and only as, is authorized by the plans, specifica-
4122 tions and requirements here following:

1. The general plan or plans of the structure shall be of an Elevated Railway, with the track or tracks supported upon a row or rows of columns; the track or tracks shall be carried by longitudinal girders, resting either upon the tops of the columns or upon transverse girders supported by the columns.

2. Where the width of the street, between the curb-stones, does not exceed thirty-six feet, the plan of construction shall be as follows, as the company constructing the railway shall elect, i. e.,

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either—First, with a row of columns on the line of each curb, and a superstructure carrying two tracks upon transverse girders spanning the street; or Second, with a row of columns upon the line of each curb, and a superstructure carrying a single track over each row of columns; or, Third, with gothic transverse arches spanning the roadway of the street from curb to curb and carrying longitudinal girders.

3. Where the width of the street, between the curb-stones, is more than thirty-six feet, but less than fifty-five feet, the plan of construction shall be as follows, as the company constructing the railway shall elect, i. e., either—First, with a row of columns on the line of each curb, and a superstructure carrying two tracks on transverse girders spanning the street; or, Second, with two rows of columns, the one upon the line of either curb and the other along or near the centre line of the roadway of the street, and a superstructure carrying two tracks upon transverse girders spanning the portion of the roadway of the street between the two rows of columns—but this plan is allowed only in the case of a street where there is no existing street railroad upon the surface of the roadway; or, Third, with a row of columns upon the line of each curb, and a superstructure carrying a single separate track over each row of columns; or, Fourth, with gothic transverse arches spanning the roadway of the street from curb to curb and carrying longitudinal girders.

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4. Where the width of the street or avenue, between the curb-stones, is fifty-five feet or more, the plan of construction shall be as follows, as the company constructing the railway shall elect, i. e.,

4426 either—First, with a row of columns upon the line of each curb, and a superstructure carrying two tracks upon transverse girders spanning the street; or, Second, with two rows of columns in the roadway of the street, and a superstructure carrying two tracks upon transverse girders—but no column authorized in this plan of construction shall be erected between any two tracks of street railroad upon the surface of the roadway; or, Third, with a row of columns upon the line of each curb, and a superstructure carrying a single separate track
4427 over each row of columns—but this plan is not allowed along or over Eighth or Ninth avenue, between West Sixty-first street and West One Hundred and Tenth street; or, Fourth, with gothic transverse arches spanning the roadway of the street from curb to curb and carrying longitudinal girders.

5. Whenever a column or row of columns is above authorized to be upon a line of curb, such column or row of columns shall be erected only within the line of curb-stones, and shall be there so situated and placed as not to obstruct vehicles
4428 or the ordinary traffic or travel in the roadway of the street.

6. There shall not be more than two rows of columns or more than two tracks in any one street or avenue or public place, except as hereinafter authorized.

7. No column shall be erected between any two tracks of street railroad now upon the surface of the roadway of the street.

8. Except where the width of a cross street, between the curbs thereof, is fifty feet or more every

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cross street shall be spanned by a single span, when and where the plan of construction used is one having a row of columns upon a curb line.

9. When and where the plan of construction used is one having two rows of columns in the roadway of the street, no column shall be erected within the curb lines of a cross street, elsewhere than upon the centre line of such cross street, but may be there erected.

10. A single or double track may be placed between longitudinal girders and carried by iron floor-beams, the latter supported by the longitudinal girders. 4430

11. Where columns are authorized to be in the roadway on each side of a street railroad track upon the surface of the roadway, the transverse distance between the columns shall be at least twenty-one feet in the clear.

12. The transverse diameter of a column authorized to be in the roadway of any street, shall not exceed fifteen inches at the base and thence for at least ten feet above the surface of the roadway; and the transverse diameter of a column authorized to be on the line of a curb, shall not exceed twenty-six inches of the base and thence for at least ten feet above the surface of the roadway. 4431

13. The transverse diameter of columns above indicated does not include fenders; and adequate fenders shall be fitted around the base of each column placed in the roadway, to prevent the hubs of the wheels of passing vehicles from striking the column.

14. Where authorized to be in the roadway, no

4432 column shall be nearer than five feet to the house-line of the cross street, but every column erected in the roadway of the street shall be set back at least five feet from that line.

15. The longitudinal distance between the columns, when both rows are in the roadway, shall not be less than thirty-five feet.

16. The longitudinal distance between columns on the curb shall be at least twenty-five feet.

17. On curves of three hundred feet radius or
4433 less the longitudinal distance between the columns in the roadway may be reduced to not less than twenty-five feet.

18. No part of the girders or superstructure shall be less than fourteen feet above the level of the street, except on a summit, where, when necessary, on account of grade, the height of the lowest part of the girders, above the roadway of the street, may be reduced to twelve feet.

19. The girders may be either plate or lattice, or any suitable form of truss, and shall not be con-
4434 tinuous over more than two spans.

20. Upon every track there shall be two continuous longitudinal stringers, of sufficient size, of the best quality and kind of timber suitable for the purpose. The joints of such longitudinal stringers shall be scarfed and bolted, and such stringers shall be securely fastened to every support on which they rest, so as to tie the structure firmly together and give it stiffness in a longitudinal direction. This requirement may be fulfilled either by longitudinal stringers under the rails, or by safety-guards of timber, if made to comply with the above conditions.

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21. The material used for that part of the structure above the ground shall be wrought-iron or steel—except that the connections between the posts which form a cluster column may be of cast-iron—and except the rails, which shall be of steel—and except the ties or longitudinal stringers supporting the rails, which shall be of the best quality and kind of selected timber. The safety-guards, if of wood, shall be of the best quality and kind of timber. Wood shall not be placed in any position where it may not be readily renewed without interrupting the travel on the road.

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22. The wronght-iron shall be of the following general character: Tough, highly fibrous and of a quality which shall be in every respect equal to that used in first-class American iron railway bridges.

23. No part of the structure shall be subjected to a greater strain of tension or compression than nine thousand pounds to the square inch; and no part shall be subjected to a greater shearing strain than seven thousand five hundred pounds to the square inch, and the structure shall not be proportioned for a less moving load than twelve hundred pounds per lineal foot for each track.

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24. The maximum deflection of any girder under the passage of a train shall never exceed one-fifteen hundredth (1/1500) of its length.

25. The plates composing the longitudinal parts of a column or girder, shall be in single pieces, except in the case of a girder of more than forty feet in length.

26. All rivets shall be of double refined iron which shall have an ultimate tensile strength of

sixty thousand pounds to the square inch. The rivet-holes shall be truly and accurately opposite each other; and the rivets shall enter the holes without drifting or forcing, and shall fill the holes.

27. All parts which make up the section of a column, except where cluster columns are used, shall be of equal thickness and of uniform quality.

28. The strength of the columns shall be proportioned by Gordon's formula for the ratio of the diameter to the length, with five as a factor of
4439 safety.

29. The different parts of the structure and their connections shall be properly proportioned to resist all of the momentum of the train which can, by the application of brakes or in any other manner, be imparted to the structure.

30. The foundations for the columns shall consist of brickwork, stonework or concrete.

31. The masonry for foundations, where the span is fifty feet, shall measure at least four and one-half feet square upon the top, at least six feet
4440 square at the bottom, shall be at least four feet in depth, and shall rest upon two thick blocks of granite or other flagging, three feet by six—so as to make a base for the masonry not less than six feet square. When the span is more than fifty feet the dimensions of the foundations shall be larger, and when the span is less than fifty feet, the dimensions of the foundations may be smaller; but the foundations must, in every case, have as much stability relative to load as is above required.

32. The earth is to be prepared for this masonry by being made firm and solid, and covered with a bed of good hydraulic mortar.

33. Every column or post shall be secured to the masonry by means of a heavy plate of cast-iron, so proportioned as to distribute the weight which comes upon it uniformly over the foundation; this plate shall be fastened by sufficiently strong wrought-iron bolts passing through the masonry—the bolts having heads which shall be upset and not welded, and having washers of sufficient size beneath the stones above named and immersed in the bottom bed of hydraulic mortar. The cast-iron plate, its connections with the column, the wrought-iron bolts, and their heads and 4442
washers, shall possess sufficient strength to receive, and resist, equally well with the column, all strains which can come upon the latter. The cast-iron shall be of the best quality suitable for bed plates which are to be covered under ground, and all castings shall be sound and fair.

34. All the iron work beneath the surface of the street shall be covered with hydraulic mortar or in some way protected from rust.

35. Good hydraulic cement shall be used in the masonry; and Portland cement of the first quality 4443
shall be used in case the foundations are constructed of concrete. If bricks are used they shall be hard burnt and of the best quality.

36. The foundations, where necessary, shall be increased in area so that in no case shall a weight greater than two thousand pounds to the square foot come upon any base.

37. All wrought-iron work shall receive one coat of metallic paint and oil before leaving the shop, and immediately after erection shall receive at least two coats of good paint. All parts of the

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structure shall, where practicable, be made accessible for the purpose of painting; and shall be well protected from rust where not accessible.

38. Efficient safety-guards shall be provided, so that, in case of accident, the cars shall be effectually prevented from leaving the structure.

39. The best form of continuous brakes, so arranged as to be under the control of the engineer, shall be applied to all trains, and to every car in each train.

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40. Every switch shall be of such design that, if left open or placed wrong, it cannot break the main track, or offer any impediment which may cause the derailment of a passing train.

41. Rails shall be of steel, not less in weight than fifty pounds per lineal yard; they shall be laid and fastened in the best manner as regards security, level and parallelism; and great attention must be given to the rail joints.

42. The railway must be equipped with the most approved system of signals to guard against

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accidents; and there shall be the necessary telegraph and signal devices.

43. Stations shall be so arranged as to be convenient of access from the street.

44. There shall be no steps (other than those leading from the street), sills, or any other projections about stations, over which persons can trip or stumble.

45. The platforms of stations shall be on a level with the platform of the cars; and nothing shall intervene between a platform and the cars that must be stepped over to enter a car.

46. Each station shall have ample space, under cover, to accommodate the passengers.

47. Where two rows of columns are authorized and either row is placed in the roadway of the street, the columns shall be erected in pairs, and both columns of each pair shall stand in line upon a line at right angles to the direction of the length of the street.

48. The stairs and all parts of the stations, except the platform, doors, windows, and inside sheathing, and except the tread of the stairs, shall 4448
be of iron.

49. All station platforms and stairs shall be protected by a substantial iron railing.

50. Every axle shall be of steel of a quality best suited to the purpose, and shall be subjected to such tests and safeguards, and be of such dimensions, as are usual in first-class railway practice.

51. Every wheel, whether of a car, locomotive or tender, shall have a tyre of steel of the best quality and form suited to the purpose, and shall be turned on the tread. The wheels shall be fitted 4449
with the best known means of deadening noise and preventing jars.

52. Authority is given for construction of such supports, turn-outs, switches, sidings, connections, landing-places, stations, buildings, platforms, stairways, elevators, telegraph and signal devices, and such other requisite appliances, upon the route or routes, and in the locations determined by the Commissioners, as shall be proper for the purpose of rapid transit railways, and as shall be necessary to meet the requirements of the traveling public.

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53. All car-axles shall be provided with the best devices used in railway practice to catch the axles and prevent them from getting adrift in case of fracture.

54. The structure shall present a substantial and tasteful appearance.

55. On River street westerly from Fourth avenue—and on Eighth avenue northerly from One Hundred and Fifty-fifth street—the railway may be constructed as a surface railroad upon the grade of the street; it shall be a double track road.

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56. All of the materials used in the construction of the work shall be of the best quality for the purposes for which they are to be applied; and the work shall be executed in the best style of the arts, and in a workmanlike manner.

57. It is the intention and spirit of these specifications to provide in every respect for a first-class structure, and no omissions of specific requirements to this effect, if any exist, shall in any case be construed in any way to invalidate this general requirement.

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58. These specifications shall be incorporated into and shall constitute an essential part of every contract made by the company for material or construction.

Second.—The New York Elevated Railroad Company, its successors or assigns, shall construct and complete said railway and railways, upon the route or routes and in the locations so as aforesaid determined, within the time (as hereinafter extended) and in the manner, and shall construct and complete the several portions or sections of said railway or railways, each within the time

(as hereinafter extended) and in the manner, by this Board of Commissioners heretofore required and by said Company agreed to as the considerations and conditions upon which said route or routes of connections was fixed, determined and designated, and as is expressed in the certain preamble and Resolutions, heretofore and on or about the 27th day of August, 1875, passed and adopted by said Company by its Board of Directors, being the same preamble and Resolutions of said Company as are mentioned and referred to in the preambles and Resolutions so as aforesaid by this 4454
Board of Commissioners on the 2d day of September, 1875, adopted. The extended times hereinbefore referred to are as follows: The said Company has and shall have, in addition to the time in said preamble and Resolutions of August 27, 1875, stated and agreed to, as follows:

1. Eight months within which to construct and complete so much of said railway and railways as is to be along and upon that portion of said route or routes so as aforesaid fixed, determined and designated, which extends from the Battery to East Fifty-ninth street—which said route and routes, 4455
so as aforesaid fixed, determined and designated, are, and by said Company are considered to be, substantially the same as were by said Company theretofore applied for and designated—and which said route and routes have by said Company been accepted in lieu of the route or routes so applied for; and

2. Six months within which to construct and complete so much of said railway and railways as is to be along and upon that portion of said route or routes so as aforesaid fixed, determined and

4456 designated, which extends from the line of East Fifty-ninth street to Harlem river.

But these conditions and requirements shall not be deemed to limit or abridge any right, privilege or exemption conferred upon said Company by either of the special acts of the Legislature heretofore enacted for said Company.

Third.—The New York Elevated Railroad Company, its successors and assigns, shall operate said railway and railways in the manner and for not to exceed the rates of fares in the said preamble
4457 and Resolutions of said Company mentioned and agreed to, which said rates of fare are hereby (as one of the requirements and conditions by this Board of Commissioners imposed upon and to be fulfilled by said Company, its successors and assigns) fixed, determined and prescribed as the maximum rates of fares authorized or allowed to be charged or collected by said Company, its successors or assigns.

Fourth.—The New York Elevated Railrod Company, its successors or assigns, shall (as another of
4458 the requirements and conditions by this Board of Commissioners imposed upon and to be fulfilled by said Company, its successors and assigns) over and upon said railway and railways run and operate the special trains and cars for the accommodation of the public and of the laboring classes, at reduced rates of fares, during the hours, and for not to exceed the rates of fares, in said preamble and Resolutions of said Company mentioned and agreed to—which special trains and cars are, in said preamble and Resolutions of said Company, designated as "commission" trains and cars.

Upon motion of Mr. Mott, seconded by Mr. Canda, it was

Resolved, That, Whereas, this Board of Commissioners did, by preamble and Resolutions duly adopted on the 2d day of September, 1875, fix and determine upon the route or routes of a steam railway or railways in the City of New York, coinciding with the route and routes covered by the Charter of the Gilbert Elevated Railway Company, an existing corporation formed for the purpose pro-
ed for by chapter 606 of Laws of 1875, by 4460
reason of which action said the Gilbert Elevated Railway Company has, by and under the terms and provisions of chapter 606 of Laws of 1875, the like power to construct and operate such railway or railways, upon fulfilment of the requirements and conditions imposed by this Board of Commissioners, as a corporation specially formed under said act; now, therefore,

This Board of Commissioners hereby specifically imposes upon the said the Gilbert Elevated Railway Company, its successors and assigns, the following requirements and conditions:

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First.—The Gilbert Elevated Railway Company, its successors and assigns, shall so modify the plan of structure which said Company is now authorized to construct as to conform to the specifications and requirements following:

1. The general plan or plans of the structure shall be of an Elevated Railway, with the track or tracks supported upon a row or rows of columns; the track or tracks shall be carried by longitudinal girders, resting either upon the tops of the columns or upon transverse girders supported by the columns.

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2. Where the width of the street, between the curb-stones, does not exceed thirty-six feet, the plan of construction shall be as follows, as the Company constructing the railway shall elect, *i. e.*, either—First, with a row of columns on the line of each curb, and a superstructure carrying two tracks upon transverse girders spanning the street; or, Second, with a row of columns upon the line of each curb, and a superstructure carrying a single track over each row of columns; or, Third, with gothic transverse arches spanning the road-

4463 way of the street from curb to curb and carrying longitudinal girders.

3. Where the width of the street, between the curb-stones, is more than thirty-six feet, but less than fifty-five feet, the plan of construction shall be as follows, as the Company constructing the railway shall elect, *i. e.*, either—First, with a row of columns on the line of each curb, and a superstructure carrying two tracks on transverse girders spanning the street; or, Second, with two rows of columns, the one upon the line of either curb, and the other along or near the centre line of the road-

4464 way of the street, and a superstructure carrying two tracks upon transverse girders spanning the portion of the roadway of the street between the two rows of columns—but this plan is allowed only in New Church street, and in the case of a street where there is no existing street railroad upon the surface of the roadway; or, Third, with a row of columns upon the line of each curb, and a superstructure carrying a single separate track over each row of columns—but this plan is not allowed along or over Second avenue, between East Houston street and East Twenty-third street; or, Fourth,

with gothic transverse arches spanning the roadway of the street from curb to curb and carrying longitudinal girders.

4. Where the width of the street or avenue between the curb-stones is fifty-five feet or more, the plan of construction shall be as follows, as the Company constructing the railway shall elect, *i. e.*, either—First, with a row of columns upon the line of each curb and a superstructure carrying two tracks upon transverse girders spanning the street; or, Second, with two rows of columns in the roadway of the street, and a superstructure carrying two tracks upon transverse girders—but no column authorized in this plan of construction shall be erected between any two tracks of street railroad upon the surface of the roadway; or, Third, with a row of columns upon the line of each curb, and a superstructure carrying a single separate track over each row of columns—but this plan is not allowed along or over Eighth or Ninth avenue, between West Sixty-first street and West One Hundred and Tenth street; or, Fourth, with gothic transverse arches spanning the roadway of the street from curb to curb and carrying longitudinal girders. 4466 4467

5. Whenever a column or row of columns is above authorized to be upon a line of curb, such column or row of columns shall be erected only within the line of curb-stones, and shall be there so situated and placed as not to obstruct vehicles or the ordinary traffic or travel in the roadway of the street.

6. There shall not be more than two rows of columns or more than two tracks in any one street

4468 or avenue or public place, except as hereinafter authorized.

7. No column shall be erected between any two tracks of street railroad now upon the surface of the roadway of the street—except in New Church street, as hereinbefore authorized.

8. Except where the width of a cross street, between the curbs thereof, is fifty feet or more, every cross street shall be spanned by a single span, when and where the plan of construction used is one
4469 having a row of columns upon a curb line.

9. When and where the plan of construction used is one having two rows of columns in the roadway of the street, no column shall be erected within the curb lines of a cross street, elsewhere than upon the centre line of such cross street, but may be there erected.

10. A single or double track may be placed between longitudinal girders and carried by iron floor-beams, the latter supported by the longitudinal girders.

4470 11. Where columns are authorized to be in the roadway on each side of a street railroad track upon the surface of the roadway, the transverse distance between the columns shall be at least twenty-one feet in the clear.

12. The transverse diameter of a column authorized to be in the roadway of any street, shall not exceed fifteen inches at the base, and thence for at least ten feet above the surface of the roadway; and the transverse diameter of a column authorized to be on the line of a curb, shall not ex-

ceed twenty-six inches at the base, and thence for at least ten feet above the surface of the roadway.

13. The transverse diameter of columns, above indicated, does not include fenders; and adequate fenders shall be fitted around the base of each column placed in the roadway, to prevent the hubs of the wheels of passing vehicles from striking the column.

14. Where authorized to be in the roadway, no column shall be nearer than five feet to the house line of the cross street, but every column erected 4472
in the roadway of the street shall be set back at least five feet from that line.

15. The longitudinal distance between the columns, when both rows are in the roadway, shall not be less than thirty-five feet.

16. The longitudinal distance between columns on the curb shall be at least twenty-five feet.

17. On the curves of three hundred feet radius or less the longitudinal distance between the columns in the roadway may be reduced to not less than twenty-five feet. 4473

18. No part of the girders or superstructure shall be less than fourteen feet above the level of the street, except on a summit, where, when necessary on account of grade, the height of the lowest part of the girders, above the roadway of the street, may be reduced to twelve feet.

19. The girders may be either plate or lattice, or any suitable form of truss, and shall not be continuous over more than two spans.

20. Upon every track there shall be two contin-

4474 uous longitudinal stringers, of sufficient size, of the best quality and kind of timber suitable for the purpose. The joints of such longitudinal stringers shall be scarfed and bolted, and such stringers shall be securely fastened to every support on which they rest, so as to tie the structure firmly together and give it stiffness in a longitudinal direction. This requirement may be fulfilled either by longitudinal stringers under the rails, or by safety-guards of timber, if made to comply with the above conditions.

4475 21. The material used for that part of the structure above the ground shall be wrought-iron or steel—except that the connections between the posts which form a cluster column may be of cast-iron—and except the rails, which shall be of steel —and except the ties or longitudinal stringers supporting the rails, which shall be of the best quality and kind of selected timber. The safety-guards, if of wood, shall be of the best quality and kind of timber. Wood shall not be placed in any position where it may not be readily renewed without interrupting the travel on the road.

4476 22. The wrought-iron shall be of the following general character: Tough, highly fibrous, and of a quality which shall be in every respect equal to that used in first-class American iron railway bridges.

23. No part of the structure shall be subjected to a greater strain or tension or compression than nine thousand pounds to the square inch; and no part shall be subjected to a greater shearing strain than seven thousand five hundred pounds to the square inch, and the structure shall not be propor-

tioned for a less moving load than twelve hundred pounds per lineal foot for each track.

24. The maximum deflection of any girder under the passage of a train shall never exceed one-fifteen hundredth (1/1500) of its length.

25. The plates composing the longitudinal parts of a column or girder shall be in single pieces, except in the case of a girder of more than forty feet in length.

26. All rivets shall be of double refined iron which shall have an ultimate tensile strength of 4478
sixty thousand pounds to the square inch. The rivet-holes shall be truly and accurately opposite each other; and the rivets shall enter the holes without drifting or forcing, and shall fill the holes.

27. All parts which make up the section of a column, except where cluster columns are used, shall be of equal thickness and of uniform quality.

28. The strength of the columns shall be proportioned by Gordon's formula for the ratio of the diameter to the length, with five as a factor of safety. 4479

29. The different parts of the structure and their connections shall be properly proportioned to resist all of the momentum of the train which can, by the application of brakes, or in any other manner be imparted to the structure.

30. The foundations for the columns shall consist of brickwork, stonework or concrete.

31. The masonry for foundations, where the span is fifty feet, shall measure at least four and one-half feet square upon the top, at least six feet

4180 square at the bottom, shall be at least four feet in depth, and shall rest upon two thick blocks of granite or other flagging, three feet by six—so as to make a base for the masonry not less than six feet square. When the span is more than fifty feet the dimensions of the foundations shall be larger, and when the span is less than fifty feet, the dimensions of the foundations may be smaller; but the foundations must, in every case, have as much stability relative to load as is above required.

4481 32. The earth is to be prepared for this masonry by being made firm and solid, and covered with a bed of good hydraulic mortar.

33. Every column or post shall be secured to the masonry by means of a heavy plate of cast-iron, so proportioned as to distribute the weight which comes upon it uniformly over the foundation; this plate shall be fastened by sufficiently strong wrought-iron bolts passing through the masonry—the bolts having heads which shall be upset and not welded, and having washers of sufficient size beneath the stones above named and immersed in the bottom bed of hydraulic mortar.

4482 The cast-iron plate, its connections with the column, the wrought-iron bolts, and their heads and washers, shall possess sufficient strength to receive and resist, equally well with the column, all strains which can come upon the latter. The cast-iron shall be of the best quality suitable for bed plates which are to be covered under ground, and all castings shall be sound and fair.

34. All the iron work beneath the surface of the street shall be covered with hydraulic mortar or in some way protected from rust.

35. Good hydraulic cement shall be used in the masonry, and Portland cement of the first quality shall be used in case the foundations are constructed of concrete. If bricks are used they shall be hard burnt and of the best quality.

36. The foundations, where necessary, shall be increased in area so that in no case shall a weight greater than two thousand pounds to the square foot come upon any base.

37. All wrought-iron work shall receive one coat of metallic paint and oil before leaving the 4484
shop, and immediately after erection shall receive at least two coats of good paint. All parts of the structure shall, where practicable, be made accessible for the purpose of painting; and shall be well protected from rust where not accessible.

38. Efficient safety-guards shall be provided, so that, in case of accident, the cars shall be effectually prevented from leaving the structure.

39. The best form of continuous brakes, so arranged as to be under the control of the engineer, shall be applied to all trains, and to every car in 4485
each train.

40. Every switch shall be of such design that, if left open or placed wrong, it cannot break the main track, or offer any impediment which may cause the derailment of a passing train.

41. Rails shall be of steel, not less in weight than fifty pounds per lineal yard; they shall be laid and fastened in the best manner as regards security, level and parallelism; and great attention must be given to the rail joints.

42. The railway must be equipped with the

most approved system of signals to guard against accidents; and there shall be the necessary telegraph and signal devices.

43. Stations shall be so arranged as to be convenient of access from the street.

44. There shall be no steps (other than those leading from the street), sills, or any other projections about stations, over which persons can trip or stumble.

45. The platforms of stations shall be on a level
4487 with the platform of the cars, and nothing shall intervene between the platform and the cars that must be stepped over to enter a car.

46. Each station shall have ample space, under cover, to accommodate the passengers.

47. Where two rows of columns are authorized, and either row is placed in the roadway of the street, the columns shall be erected in pairs, and both columns of each pair shall stand in line upon a line at right angles to the direction of the length of the street.

4488 48. The stairs and all parts of the stations, except the platform, doors, windows, and inside sheathing, and except the tread of the stairs, shall be of iron.

49. All station platforms and stairs shall be protected by a substantial iron railing.

50. Every axle shall be of steel of a quality best suited to the purpose, and shall be subjected to such tests and safeguards, and be of such dimensions, as are usual in first-class railway practice.

51. Every wheel, whether of a car, locomotive or tender, shall have a tyre of steel of the best

quality and form suited to the purpose, and shall be turned on the tread. The wheels shall be fitted with the best known means of deadening noise and preventing jars.

52. Authority is given for construction of such supports, turn-outs, switches, sidings, connections, landing-places, stations, buildings, platforms, stairways, elevators, telegraph and signal devices, and such other requisite appliances upon the route or routes, and in the locations determined by the Commissioners, as shall be proper for the purpose of rapid transit railways, and as shall be necessary to meet the requirements of the traveling public. 4190

53. All car axles shall be provided with the best devices used in railway practice to catch the axles and prevent them from getting adrift in case of fracture.

54. The structure shall present a substantial and tasteful appearance.

55. On River street westerly from Fourth avenue—and on Eighth avenue northerly from One Hundred and Fifty-fifth street—the railway may be constructed as a surface railroad upon the grade of the street; it shall be a double track road. 4191

56. All of the materials used in the construction of the work shall be of the best quality for the purposes for which they are to be applied; and the work shall be executed in the best style of the arts, and in a workmanlike manner.

57. It is the intention and spirit of these specifications to provide in every respect for a first class structure, and no omissions of specific requirements to this effect, if any exist, shall in any case

be construed in any way to invalidate this general requirement.

58. The specifications shall be incorporated into and shall constitute an essential part of every contract made by the company for material or construction.

Second.—The Gilbert Elevated Railway Company, its successors or assigns, shall construct and complete said railway and railways upon the route or routes, and in the locations so as aforesaid determined upon, within the time and in the manner, 4493 and shall construct and complete the several portions or sections of said railway or railways, each within the time and in the manner, by this Board of Commissioners heretofore required and by said Company agreed to, as the consideration and conditions upon which said coincident route was determined upon, and as is expressed in the certain preamble and Resolutions heretofore, and on or about the 2d day of September, 1875, adopted by the said Company by its Board of Directors, being the same preamble and Resolutions of said Company mentioned and referred to in the said pre- 4491 amble and Resolutions so as aforesaid by this Board of Commissioners, on the 2d day of September, 1875, adopted: Provided, however, that if the said Company, its successors or assigns, shall elect to construct and complete, and shall construct and complete the railway, for not less than three miles, on the westerly side of the city, running south from West Forty-second street, within ten months from the 1st day of October, 1875 (subject only to the proviso and reservations by said Company reserved and provided in said Resolutions of the Company of September 2, 1875, as to time of

completion), then and in that case, the time for constructing so much of said railway as is to be upon that portion of the route which extends from the Bowling Green along certain prescribed streets to First avenue, thence along First avenue to East Twenty-third street, thence along East Twenty-third street to Second avenue, thence along Second avenue to Harlem river, and thence along River street to Third avenue, shall not begin to run until the expiration of one year after the right, by this Board of Commissioners conferred upon the New York Elevated Railroad Company, or to be conferred by this Board of Commissioners upon the Company to be formed and organized by this Board of Commissioners under the terms and provisions of chapter 606, Laws of 1875, to construct a railway or railways over, through and along Third avenue, shall have remained unexercised and shall have expired; and Provided, also, that these conditions and requirements shall not be deemed to limit or abridge any right, privilege or exemption conferred upon said Company by the Charter thereof or by the or either of the acts amendatory of said Charter. 4496 4497

Third.—The Gilbert Elevated Railway Company, its successors and assigns, shall operate said railway and railways in the manner and for not to exceed the rates of fares in the said preamble and Resolutions of said Company mentioned and agreed to, which said rates of fares are hereby (as one of the requirements and conditions by this Board of Commissioners imposed upon said Company, its successors and assigns) fixed, determined and prescribed as the maximum rates of fares authorized or allowed to be charged or collected by said Company, its successors or assigns.

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Fourth.—The Gilbert Elevated Railway Company, its successors or assigns, shall (as another of the requirements and conditions by this Board of Commissioners imposed upon said Company, its successors and assigns), over and upon said railway or railways, run and operate the special trains and cars for the accommodation of the public and of the laboring classes, at reduced rates of fares—during the hours and at the rates of fares in said preamble and Resolutions of said Company mentioned and agreed to—which special trains and

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cars are, in said preamble and Resolutions of said Company, designated as "commission" trains and cars.

Upon motion of Mr. Brown, seconded by Mr. Delamater, it was

Resolved, That the Commissioners appointed by the Mayor of the City of New York, under and in compliance with the provisions of chapter 606, Laws of 1875, having by public notice invited the submission of plans for the construction and operation of a railway or railways for the purpose provided for by said act, and having examined and

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considered the numerous plans and devices submitted to them, do hereby select and decide upon the plans, as follows, for the construction of such railway or railways, with the necessary turnouts, etc., upon the route or routes and in the locations determined by them by preambles and Resolutions adopted on the 3d day of September, 1875:

1. The general plan or plans of the structure shall be of an Elevated Railway, with the track or tracks supported upon a row or rows of columns; the track or tracks shall be carried by longitudinal girders, resting either upon the tops of the columns

or upon transverse girders supported by the columns.

2. Where the width of the street, between the curb-stones, does not exceed thirty-six feet, the plan of construction shall be as follows, as the company constructing the railway shall elect, *i. e.*, either—First, with a row of columns on the line of each curb, and a superstructure carrying two tracks upon transverse girders spanning the street; or, Second, with a row of columns upon the line of each curb, and a superstructure carrying a single track over each row of columns; or, Third, with gothic transverse arches spanning the roadway of the street from curb to curb and carrying longitudinal girders. 4502

3. Where the width of the street, between the curb-stones, is more than thirty-six feet, but less than fifty-five feet, the plan of construction shall be as follows, as the company constructing the railway shall elect, *i. e.*, either—First, with a row of columns on the line of each curb, and a superstructure carrying two tracks on transverse girders spanning the street; or, Second, with two rows of columns, the one upon the line of either curb and the other along or near the centre line of the roadway of the street, and a superstructure carrying two tracks upon transverse girders spanning the portion of the roadway of the street between the two rows of columns—but this plan is allowed only in New Church street and in the case of a street where there is no existing street railroad upon the surface of the roadway; or, Third, with a row of columns upon the line of each curb, and a superstructure carrying a single separate track over each row of columns—but this plan is not allowed along 4503

or over Second avenue, between East Houston street and East Twenty-third street; or, *Fourth*, with gothic transverse arches spanning the roadway of the street from curb to curb and carrying longitudinal girders.

4. Where the width of the street or avenue between the curb-stones is fifty-five feet or more, the plan of construction shall be as follows, as the company constructing the railway shall elect, *i. e.*, either—First, with a row of columns upon the line of each curb and a superstructure carrying two
4505 tracks upon transverse girders spanning the street; or, Second, with two rows of columns in the roadway of the street, and a superstructure carrying two tracks upon transverse girders—but no column authorized in this plan of construction shall be erected between any two tracks of street railroad upon the surface of the roadway; or, Third, with a row of columns upon the line of each curb, and a superstructure carrying a single separate track over each row of columns—but this plan is not allowed along or over Eighth or Ninth avenue, between West Sixty-first street and West One Hun-
4506 dred and Tenth street; or, Fourth, with gothic transverse arches spanning the roadway of the street from curb to curb, and carrying longitudinal girders.

5. Whenever a column or row of columns is above authorized to be upon a line of curb, such column or row of columns shall be erected only within the line of curb-stones, and shall be there so situated and placed as not to obstruct vehicles or the ordinary traffic or travel in the roadway of the street.

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6. There shall not be more than two rows of columns or more than two tracks in any one street or avenue or public place, except as hereinafter authorized.

7. No column shall be erected between any two tracks of street railroad now upon the surface of the roadway of the street—except in New Church street, as hereinbefore authorized.

8. Except where the width of a cross street between the curbs thereof, is fifty feet or more, every cross street shall be spanned by a single span, when and where the plan of construction used is one having a row of columns upon a curb line.

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9. When and where the plan of construction used is one having two rows of columns in the roadway of the street, no column shall be erected within the curb lines of a cross street, elsewhere than upon the centre line of such cross street, but may be there erected.

10. A single or double track may be placed between longitudinal girders and carried by iron floor-beams, the latter supported by the longitudinal girders.

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11. Where columns are authorized to be in the roadway on each side of a street railroad track upon the surface of the roadway, the transverse distance between the columns shall be at least twenty-one feet in the clear.

12. The transverse diameter of a column authorized to be in the roadway of any street, shall not exceed fifteen inches at the base and thence for at least ten feet above the surface of the road-

4510 way; and the transverse diameter of a column authorized to be on the line of a curb, shall not exceed twenty-six inches at the base and thence for at least ten feet above the surface of the roadway.

13. The transverse diameter of columns, above indicated, does not include fenders; and adequate fenders shall be fitted round the base of each column placed in the roadway, to prevent the hubs of the wheels of passing vehicles from striking the column.

4511 14. Where authorized to be in the roadway, no column shall be nearer than five feet to the house line of the cross street, but every column erected in the roadway of the street shall be set back at least five feet from that line.

15. The longitudinal distance between the columns, when both rows are in the roadway, shall not be less than thirty-five feet.

16. The longitudinal distance between columns on the curb shall be at least twenty-five feet.

4512 17. On curves of three hundred feet radius or less the longitudinal distance between the columns in the roadway may be reduced to not less than twenty-five feet.

18. No part of the girders or superstructure shall be less than fourteen feet above the level of the street, except on a summit, where, when necessary on account of grade, the height of the lowest part of the girders, above the roadway of the street, may be reduced to twelve feet.

19. The girders may be either plate or lattice,

or any suitable form of truss, and shall not be continuous over more than two spans.

20. Upon every track there shall be two continuous longitudinal stringers, of sufficient size, of the best quality and kind of timber suitable for the purpose. The joints of such longitudinal stringers shall be scarfed and bolted, and such stringers shall be securely fastened to every support on which they rest, so as to tie the structure firmly together and give it stiffness in a longitudinal direction. This requirement may be fulfilled either by longitudinal stringers under the rails, or by safety-guards of timber, if made to comply with the above conditions. 4514

21. The material used for that part of the structure above the ground, shall be wrought-iron or steel—except that the connections between the posts which form a cluster column may be of cast-iron—and except the rails, which shall be of steel—and except the ties or longitudinal stringers supporting the rails, which shall be of the best quality and kind of selected timber. The safety-guards, if of wood, shall be of the best quality and kind of timber. Wood shall not be placed in any position where it may not be readily renewed without interrupting the travel on the road. 4515

22. The wrought-iron shall be of the following general character: Tough, highly fibrous, and of a quality which shall be in every respect equal to that used in first-class American iron railway bridges.

23. No part of the structure shall be subjected to a greater strain or tension or compression than 5,000 pounds to the square inch; and no part

4516 shall be subjected to a greater shearing strain than seven thousand five hundred pounds to the square inch, and the structure shall not be proportioned for a less moving load than twelve hundred pounds per lineal foot for each track.

24. The maximum deflection of any girder under the passage of a train shall never exceed one-fifteen hundredth (1/1500) of its length.

25. The plates composing the longitudinal parts of a column or girder shall be in single pieces ex-
4517 cept in the case of a girder of more than forty feet in length.

26. All rivets shall be of double refined iron which shall have an ultimate tensile strength of sixty thousand pounds to the square inch. The rivet-holes shall be truly and accurately opposite each other; and the rivets shall enter the holes without drifting or forcing, and shall fill the holes.

27. All parts which make up the section of a column, except where cluster columns are used, shall be of equal thickness and of uniform quality.

4518 28. The strength of the columns shall be proportioned by Gordon's formula for the ratio of the diameter to the length, with five as a factor of safety.

29. The different parts of the structure and their connections shall be properly proportioned to resist all of the momentum of the train which can, by the application of brakes, or in any other manner, be imparted to the structure.

30. The foundations for the columns shall consist of brickwork, stonework or concrete.

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31. The masonry for foundations, where the span is fifty feet, shall measure at least four and one-half feet square upon the top, at least six feet square at the bottom, shall be at least four feet in depth, and shall rest upon two thick blocks of granite or other flagging, three feet by six—so as to make a base for the masonry not less than six feet square. When the span is more than fifty feet, the dimensions of the foundations shall be larger, and when the span is less than fifty feet, the dimensions of the foundations may be smaller; but the foundations must, in every case, have as much stability relative to the load as is above required.

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32. The earth is to be prepared for this masonry by being made firm and solid, and covered with a bed of good hydraulic mortar.

33. Every column or post shall be secured to the masonry by means of a heavy plate of cast-iron, so proportioned as to distribute the weight which comes upon it uniformly over the foundation; this plate shall be fastened by sufficiently strong wrought-iron bolts passing through the masonry—

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the bolts having heads which shall be upset and not welded, and having washers of sufficient size beneath the stones above named and immersed in the bottom bed of hydraulic mortar. The cast-iron plate, its connections with the column, the wrought-iron bolts, and their heads and washers, shall possess sufficient strength to receive and resist, equally well with the column, all strains which can come upon the latter. The cast-iron shall be of the best quality suitable for bed-plates which are to be covered under ground, and all castings shall be sound and fair.

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34. All the iron work beneath the surface of the street shall be covered with hydraulic mortar or in some way protected from rust.

35. Good hydraulic cement shall be used in the masonry; and Portland cement of the first quality shall be used in case the foundations are constructed of concrete. If bricks are used they shall be hard burnt and of the best quality.

36. The foundations, where necessary, shall be increased in area so that in no case shall a weight
4523 greater than two thousand pounds to the square foot come upon any base.

37. All wrought-iron work shall receive one coat of metallic paint and oil before leaving the shop, and immediately after erection shall receive at least two coats of good paint. All parts of the structure shall, where practicable, be made accessible for the purpose of painting; and shall be well protected from rust where not accessible.

38. Efficient safety-guards shall be provided, so that, in case of accident, the cars shall be effectually prevented from leaving the structure.
4524

39. The best form of continuous brakes, so arranged as to be under the control of the engineer, shall be applied to all trains, and to every car in each train.

40. Every switch shall be of such design that, if left open or placed wrong, it cannot break the main track, or offer any impediment which may cause the derailment of a passing train.

41. Rails shall be of steel, not less in weight than fifty pounds per lineal yard; they shall be

laid and fastened in the best manner as regards security, level and parallelism; and great attention must be given to the rail joints.

42. The railway must be equipped with the most approved system of signals to guard against accidents; and there shall be the necessary telegraph and signal devices.

43. Stations shall be so arranged as to be convenient of access from the street.

44. There shall be no steps (other than those leading from the street), sills, or any other projections about stations, over which persons can trip or stumble. 4526

45. The platforms of stations shall be on a level with the platform of the cars; and nothing shall intervene between a platform and the cars that must be stepped over to enter a car.

46. Each station shall have ample space, under cover, to accommodate the passengers.

47. Where two rows of columns are authorized and either row is placed in the roadway of the street, the columns shall be erected in pairs, and both columns of each pair shall stand in line upon a line at right angles to the direction of the length of the street. 4527

48. The stairs and all parts of the stations, except the platform, doors, windows, and inside sheathing, and except the tread of the stairs, shall be of iron.

49. All station platforms and stairs shall be protected by a substantial iron railing.

50. Every axle shall be of steel of a quality

4528 best suited to the purpose, and shall be subjected to such tests and safeguards, and be of such dimensions, as are usual in first-class railway practice.

51. Every wheel, whether of a car, locomotive or tender, shall have a tyre of steel of the best quality and form suited to the purpose and shall be turned on the tread. The wheels shall be fitted with the best known means of deadening noise and preventing jars.

4529 52. Authority is given for construction of such supports, turn-outs, switches, sidings, connections, landing-places, stations, buildings, platforms, stairways, elevators, telegraph and signal devices, and such other requisite appliances, upon the route or routes, and in the locations determined by the Commissioners, as shall be proper for the purpose of rapid transit railways, and as shall be necessary to meet the requirements of the traveling public.

53. All car axles shall be provided with the best devices used in railway practice to catch the axles and prevent them from getting adrift in case
4530 of fracture.

54. The structure shall present a substantial and tasteful appearance.

55. On River street westerly from Fourth avenue—and on Eighth avenue northerly from One Hundred and Fifty-fifth street—the railway may be constructed as a surface railroad upon the grade of the street; it shall be a double track road.

56. All of the materials used in the construction of the work shall be of the best quality for the purposes for which they are to be applied; and

the work shall be executed in the best style of the arts, and in a workmanlike manner.

57. It is the intention and spirit of these specifications to provide in every respect for a first-class structure, and no omissions of specific requirements to this effect, if any exist, shall in any case be construed in any way to invalidate this general requirement.

58. These specifications shall be incorporated into and shall constitute an essential part of every contract made by the company for material or construction. 4532

Upon motion of Mr. Mott, seconded by Mr. Brown, it was

Resolved: First.—That the time within which the company to be formed and organized by this Board of Commissioners (and which shall be known as the Manhattan Railway Company) shall construct the several portions of the railway and railways, and shall have the same ready to be operated, along and upon the route or routes heretofore, by preambles and Resolutions duly adopted on the 3d day of September, 1875, fixed, determined and located by this Board of Commissioners, be and hereby is fixed and determined, as follows: 4533

1. The portion of the railway or railways to be constructed from Tryon Row, along the easterly side of the city, to East Fifty-ninth street, shall be constructed and be ready to be operated before or by the 1st day of May, 1877;

2. The portion of the railway or railways to be constructed from East Fifty-ninth street, along the easterly side of the city, to the Harlem river, shall

4534 be constructed and be ready to be operated before or by the 1st day of December, 1877;

3. The portion of the railway or railways to be constructed from Harlem Bridge to the High Bridge, shall be constructed and be ready to be operated before or by the 1st day of December, 1878;

4. The portion of the railway or railways to be constructed from the line of Chambers street, along the westerly side of the city, to West Fifty-ninth
4535 street, shall be constructed and be ready to be operated before or by the 1st day of May, 1877;

5. The portion of the railway or railways to be constructed from West Fifty-ninth street, along the westerly side of the city and to the northerly terminus of the line of the route on the westerly side of the city, shall be constructed and be ready to be operated before or by the 1st day of June, 1878; and

6. The remainder of the railway or railways to be constructed upon the route or routes so as
4536 aforesaid fixed, determined and located on the 3d day of September, 1875, shall be constructed and be ready to be operated before or by the 1st day of June, 1878.

Second—That each of the said periods and limitations of time hereinbefore referred to and prescribed, as the time within which the several sections or portions of railway or railways shall be constructed and be ready to be operated, is, however, subject to this proviso and reservation, as follows: That the time, if any, unavoidably consumed by the pendency of legal proceedings, or by the interference of the public authorities, shall not

be deemed a part of any period of the time within which construction and completion of the railway or railways is required to be made. But the time, if any, during which such unavoidable delay shall continue, shall be added to each of the periods hereby otherwise limited for construction and completion of the railway or railways.

Third—That the rates of fares authorized and allowed to be charged and collected upon trains to be run upon such railway or railways or upon any portion thereof, shall be only as follows—the same being the rates of fares by this Board of Commissioners fixed and determined as the maximum rates to be paid for transportation and conveyance over such railway or railways—as follows: 4538

1. Upon trains and in cars other than those hereinafter designated as "Commission" trains and cars, for any distance under five miles, not to exceed ten cents; and not to exceed two cents per mile for each mile or fraction of a mile in excess of a mile over five miles until the fare shall amount to not to exceed fifteen cents for a through passenger from and between the Battery, or any point to the north thereof, and the intersection of Third avenue and the H rlem river; and from and between the Battery or any point to the north thereof and the High Bridge (running upon whether the easterly or the westerly side of the city), not to exceed seventeen cents for a through passenger. For the entire distance, or any part of it, from and between the Battery and either East or West Fifty-ninth street, the fare shall not exceed ten cents; and 4539

2. Upon what are hereinafter designated as

4540 "Commission" cars or trains, to be run during certain hours at reduced rates of fare, for the accommodation of the public and of the laboring classes, the rate of fare shall not exceed five cents from and between the Battery, or any point to the north thereof, and either East or West Fifty-ninth street; and shall not exceed five cents for any distance not exceeding five miles; and shall not exceed seven cents for a through passenger from and between the Battery or any point to the north thereof and the Harlem river; and shall not ex-
4541 ceed eight cents for a through passenger, on any of said "Commission" trains or cars from and between the Battery or any point to the north thereof, and the High Bridge.

Fourth—The Company shall run special trains or cars, at reduced rates of fares, as aforesaid, for the accommodation of the public and of the laboring classes, daily, during the hours between 5:30 o'clock and 7:30 o'clock A. M., and 5 o'clock and 7 o'clock P. M. Such trains or cars shall be known and designated as "Commission" cars or trains; shall be in numbers sufficient to accommodate the
4542 public and the laboring classes during the hours indicated, and shall be run at intervals really to afford such accommodation; they shall stop regularly at all regular stations of the Company, and shall be run at the rate of speed of the other local trains of the Company. During said hours a seat shall be provided in a "Commission" car for every passenger on the train who desires to travel in a "Commission" car; otherwise, any passenger desiring and demanding a seat in such a car, shall be entitled to occupy a seat in another car upon the train, upon payment of only the reduced rate

of fare to be paid for transportation and conveyance in a "Commission" car.

Fifth—A seat in a car other than a "Commission" car shall (except during the hours above indicated) be provided for every passenger upon any train, who desires and demands such a seat; otherwise, and except during said hours, such passenger shall be entitled to travel without payment of fare. As a part of any train of cars, there may be one or more of the kind known as "saloon cars" or "drawing-room cars," with special arrangements 4544
for extra comfort and space; and there may be demanded of, charged to, and collected from each passenger who shall, when a seat in another car is provided, occupy a seat in such a "saloon car" or "drawing-room car," an extra (though not unreasonable) rate of fare, in addition to the rates hereinbefore fixed and determined.

Sixth—The Company is not required to construct a railway upon any portion of the route along Second avenue, if a railway shall within the time hereinbefore limited for construction of a railway along Second avenue, be constructed and com- 4545
pleted upon the route fixed and determined by this Board of Commissioners along Third avenue.

As each of the first three of said Resolutions was, in turn, moved and was under discussion, the following motions were, as to each of them, made:

Moved by Mr. Canda, seconded by Mr. Delamater:

That the Second subdivision of section 3 be struck out.

Lost—only Mr. Canda voting in the affirmative—the other Commissioners voting in the negative.

4546 Moved by Mr. Mott, seconded by Mr. Brown:

That the word "gothic" be struck out wherever it occurs.

Lost—only Mr. Mott voting in the affirmative—the other Commissioners voting in the negative.

Moved by Mr. Canda, seconded by Mr. Mott:

That the Second subdivision of section 4 be struck out.

Lost—only Mr. Canda voting in the affirmative—the other Commissioners voting in the negative.

Moved by Mr. Mott, seconded by Mr. Canda:

4547 That, after specification 58, there be added the following: 59. All trains shall be provided with devices adequate to prevent ashes, grease, or water from falling into the street.

Lost—only Mr. Mott and Mr. Seligman voting in the affirmative—the other Commissioners voting in the negative.

As the motion moved by Mr. Brown was under discussion, it was moved by Mr. Mott, seconded by Mr. Delamater:

4548 That, after the words "Twenty-third street," occurring at the end of subdivision Third of section 3, there be added the words, "or along or over Third avenue or Sixth avenue."

Lost—only Mr. Mott and Mr. Seligman voting in the affirmative—the other Commissioners voting in the negative.

Upon motion of Mr. Brown, adjourned to 6th inst., at 2 o'clock P. M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of the Board, New Court-house.

Wednesday, October 6, 1875—2 o'clock P. M.

The Board met, pursuant to adjournment, at 2 o'clock P. M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

The following report was prepared, signed by the several Commissioners, forwarded to the Mayor, and ordered to be printed in the minutes: 4550

Office of the Board of Commissioners of Rapid Transit, New York, October 6, 1875.

To his Honor, William H. Wickham, Mayor:

Sir—The undersigned, the Commissioners appointed by you under the provisions of chapter 606, Laws of 1875, reported on the 6th ultimo the routes for steam railways, fixed, determined and located within the sixty days by the law allowed for such action. The reasons then stated for addressing the report to you prompt us now to make formal report to you of the plans also which we have, within the ninety days allowed for that purpose, decided upon for the construction of such railways, with the necessary supports, etc., upon the routes and in the locations determined. 4551

As was suggested in our former communication, we have attempted to ascertain, not what is, under other circumstances, the best in theory merely—but what is the best which can, here and now, be realized in practice. We have thought it to be our duty so to designate routes, and so to describe plans

4552 of structure, as to make sure, if possible, of the actual accomplishment of rapid transit. And, beginning our work with a sincere desire for information, and with minds open to conviction, we have considered every suggestion made in response to published or personal invitations, upon the subject. To engineers, and to capitalists expressing a desire to invest moneys in the enterprise, we have given special attention. We perceived, at once, that in such an undertaking capital should be hampered with the fewest possible

4553 restrictions.

Remembering the discussions had during the last fifteen years, and the history of the several attempts, in that time made, to reach the result desired; considering the circumstances of the present situation; and advised by engineers, and by capitalists as well—we had, before the date of our previous report, reached the conclusion that elevated steam railways are not only more likely than any other steam railways to be actually constructed in this city, but are the best for the purpose in view. It is with reference to the location, not of the

4554 tracks or railways, but of the route itself, that the law, under which we have acted, required us to determine whether it should be "over, under, through or across" the several streets traversed. And you will remember that, in our Resolutions designating routes and adopted within the statutory sixty days, we carefully described elevated routes. Nobody has proposed to us to construct a railway either upon the surface of the street or in a tunnel. But, when we determined the routes; we had already heard the arguments of the engineers who have proposed what are called "depressed" or "open-cut" railways; and we had ex-

amined their drawings and specifications. Since then, and within the last three weeks, we have been again urged, by parties in interest, to decide upon that plan as the style of construction to be adopted. But our deliberate judgment has been against it; and, had we been otherwise inclined, we are advised by counsel that, having designated the routes already described, it was not within our power to decide upon the "depressed" or "open-cut" plan of construction; and that it is, indeed, doubtful whether the law which allows the streets to be used for steam railways can be held to intend that so large a portion of the roadway of the streets as is necessary to make a "depressed" or "open-cut" railway materially better than an underground or tunnel road, should be absolutely withdrawn from the possibility of use for any purpose other than that of furnishing air and light to a steam railway below the surface. 4556

The plans for the construction of rapid transit railways now decided upon by us are described in the Resolutions adopted on the 4th inst., and of which copies accompany this report.

It will be observed that, with regard to the structure, we have limited our requirements to essentials—exacting attention only to the necessary conditions of strength and safety. As to all matters of detail, we have allowed the widest range of choice to those who shall build the road. Our purpose has been to secure the roadway of the streets against obstruction whevever it is practicable to do so; and, though we have allowed a certain range of choice for selection, by the companies building the roads, of the plan of structure to be used in any particular street, it will be found, we think that they are required to employ in each street a struc- 4557

4558 ture which affords least occasion for objection in that locality. We have had a communication from the Honorable the Common Council on this subject, which was received with great deference; and with the suggestions there made we have complied as far as was possible in view of the general controlling considerations above referred to.

Among the plans submitted to us by engineers and inventors, there are many of great merit—too many to be here more particularly referred to—and the general requirements, by us adopted, al-
4559 low, we believe, the companies which may construct the railways to select the best features of each of those plans in the structure to be erected. The time allowed us by the statute within which to decide upon the style of construction, has proved too short for the investigation and experiments which might have enabled us to speak with confidence as to the relative excellence of many of those plans. That must be left to the experts who will be employed by the capitalists controlling the corporations which are to build the railways.

In our labors we have been assisted by the ex-
4560 haustive and admirable report of the Society of Civil Engineers upon this subject of rapid transit roads; and we have also had the privilege of reference to the recorded proceedings of Commissioners who have preceded us in consideration of the elements of the problem peculiar to this locality. For quite two months we have had the advantage of daily consultation with Mr. Isaac Newton and Mr. Samuel H. Shreve, well-known civil engineers, who have given special attention to the questions which arise with reference to elevated railways. They have made careful examination of the many plans of construction submitted to us; and to their

experience, and their thorough knowledge as to theory as well as practice in such cases, we are greatly indebted.

The law under which we have acted is new. It contains many provisions novel in the legislation of this State and upon which the courts have not yet passed. The Constitution, too, has been recently so amended as greatly to increase the difficulties of enterprises such as we have been directed to provide for. And several of the parties concerned have been constantly represented before us by counsel advocating the views and interests of 4562
clients. Under those circumstances we have found it necessary to require the almost daily attendance and advice of Burton N. Harrison, Esq., who is our own regular counsel; and we have also, at his suggestion, repeatedly consulted with, and had the opinions of, James Emott, Esq., and Stephen P. Nash, Esq., who were retained by Mr. Harrison as special counsel to the Board.

Although the New York Elevated Railroad Company and the Gilbert Elevated Railway Company give us reasonable assurance that they will construct and operate railways, within the times and 4563
upon the routes prescribed to them by us, we still adhere to the opinion, suggested in our previous Report, and for the reasons there stated, that a new corporation should be organized, as the law allows us to do, to render assurance doubly sure that our labors will result in rapid transit actually accomplished. That corporation we have decided to name the "Manhattan Railway Company." It is to be organized with a capital stock of $2,000,000; and books of subscription to the capital will be opened within the next thirty days—and as soon as practicable after we shall have drawn the ar-

4564 ticles of association, by the law required to be by us prepared for the subscribers.

We have also, and within the statutory ninety days, determined the times within which the several portions of the railways shall be constructed and be ready to be operated, together with the maximum rates to be paid for transportation and conveyance over such railways, and the hours during which special cars or trains shall be run at reduced rates of fares. Copies of our resolutions on these subjects are hereto annexed as a part of

4565 this Report.

In finishing this communication, we are happy to be able again to inform you of the harmony with which we have worked together since the Board was organized, and to state that the conclusions reached are by unanimous votes. We have done everything in our power to further your own expressed wishes and earnest efforts in solution of one of the urgent problems of the day in municipal government. And you can, in the future as heretofore, rely upon our co-operation—with the hope that, by rendering the middle and upper

4566 portions of the city accessible by rapid transit from the localities in which business is now centered, we may not only add to the comforts and conveniences of life in New York, but may secure a large increase in population, and, by distributing values of property more evenly throughout the area of the city, reduce the rate of taxation, and reduce also the amount of the city debt.

Very respectfully, your obedient servants, Joseph Seligman, Lewis B. Brown, C. H. Delamater, Jordan L. Mott, C. J. Canda, Commissioners.

The Resolutions referred to in that report, and

copies of which accompanied it to the Mayor, are the Resolutions in the minutes of the meeting held on the 4th instant appearing.

Upon motion of Mr. Canda, adjourned, to meet on the 18th inst., at the Mayor's Office, at 12 o'clock M.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Mayor's Office.

Monday, October 18, 1875—12 o'clock M. 4568

The Board met, pursuant to adjournment, at 12 o'clock M., at the Mayor's Office.

Present—Four of the Commissioners, viz.: The President, Lewis B. Brown, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

Two hours were spent in discussion of Articles of Association to be prepared for the Manhattan Railway Company, and of the form of subscription to the capital of that Company—when, upon motion of Mr. Brown, the whole subject was referred to the Counsel to the Board, with authority to consult such special Counsel as he may select. 4569

Upon motion of Mr. Canda, adjourned to 25th inst., at 2 o'clock P. M., at the Mayor's Office.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Mayor's Office.

Monday, October 25, 1875—2 o'clock P. M.

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The Board met, pursuant to adjournment, at 2 o'clock P. M. at the Mayor's Office.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Canda, the reading of the minutes was dispensed with.

Mr. Harrison submitted a draft of Articles of Association for the Manhattan Railway Company, and draft of form of subscription to the capital of

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that Company, prepared by him after consultation with Mr. Emott and Mr. Nash, Special Counsel.

An hour was spent by the Commissioners in discussion of those subjects.

Upon motion of Mr. Mott, seconded by Mr. Brown, the following public notice was directed to be advertised in several daily and other newspapers:

Office of the Board of Commissioners of Rapid Transit, New York, October 23, 1875.

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By direction of the Board of Commissioners heretofore appointed by the Mayor of the City of New York, under and pursuant to the provisions of chapter 606, Laws of 1875, public notice is hereby given that the said Commissioners will cause a suitable book of subscription, to the capital stock of the Company to be incorporated and organized under the provisions of said act and to be known as the "Manhattan Railway Company," to be opened at ten o'clock A. M., on Friday, the 29th day of October, 1875, at the Corn Exchange Bank, No. 13 William street, in the City and County of New York. The amount of said capital stock is fixed at two millions ($2,000,000) of dollars, divid-

ed into twenty thousand (20,000) shares, subject to the right to increase the capital stock from time to time, as is by said act provided. The shares will be of the par value of one hundred ($100) dollars each. The whole capital stock is to be subscribed by not less than twenty-five persons; and on subscribing, each subscriber is required to pay, in cash, five per centum of the par value of the number of shares subscribed by him.

By order of the Board, Burton N. Harrison, Acting as Secretary. 4574

Upon motion of Mr. Brown, adjourned to 27th inst., at 2 o'clock P. M., at the Mayor's Office.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit. City of New York, Mayor's Office.

Wednesday, October 27, 1875—2 o'clock P. M.

The Board met, pursuant to adjournment, at 2 o'clock P. M., at the Mayor's Office.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, 4575 Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

Mr. Foster and Mr. Emott were, upon invitation, present with the Board, and took part in the discussions.

The Secretary reported that the public notice, directed at the meeting held on the 25th instant to be advertised, is now appearing in a number of the daily and other newspapers of the city.

Mr. Harrison submitted proposed Articles of As-

1576 sociation for the Manhattan Railway Company, drawn in compliance with the instructions of the Board, and after further conference with special counsel. The articles as drawn were satisfactory to the Board, and

Upon motion of Mr. Brown, seconded by Mr. Delamater, it was

Resolved, That Articles of Association for the Company, to be organized under chapter 606, Laws of 1875, be and hereby are prepared as follows:

Articles of Association for the "Manhattan Rail-
4577 way Company," prepared pursuant to chapter 606, Laws of 1875, by the Board of Commissioners appointed by the Mayor of the City of New York in compliance with the provisions of said Act.

Article I. We, the undersigned, and others, have associated ourselves together with the purpose of constructing, maintaining and operating a Steam Railway or Railways for the transportation of passengers, mails or freight, wholly within the limits of the City of New York, with all the rights, powers, franchises and privileges to such
4578 a company allowed by and under the terms of chapter 606, Laws of 1875.

Article II. The name of the Company shall be the "Manhattan Railway Company."

Article III. The capital stock of the Company shall be two millions ($2,000,000) of dollars, divided into twenty thousand (20,000) shares—subject, however, to the right to increase the capital stock from time to time as by chapter 606, Laws of 1875, is provided. The shares shall be of the par value of one hundred ($100) dollars each.

Article IV. The affairs of the Company shall be managed by a Board of nine Directors.

Article V. The Company is to be continued for ninety-nine years from the 1st day of November, 1875.

Article VI. The several conditions, requirements and particulars by said Board of Commissioners determined pursuant to section 4 of said chapter 606, Laws of 1875, (by two several series of Resolutions adopted at a meeting duly convened and held in the City of New York, on the 3d day 4580
of September, 1875), are hereby set forth and embodied as component parts of these Articles of Association. The first of said series of Resolutions is in terms as follows, with the preamble thereto prefixed:

Whereas, It is considered by this Board of Commissioners desirable for the public convenience to fix and determine the route or routes for a steam railway or railways in the City of New York, and to locate the route or routes of such railway or railways over, along, through or across the streets, avenues, places or lands in the City and County of 4581
New York as hereinafter mentioned; now therefore

Resolved, That this Board of Commissioners hereby fixes and determines the route or routes for such steam railway or railways, and locates the route or routes of such railway or railways, over, along, through or across the streets, avenues, places or lands in the City and County of New York, as follows:

Beginning at the intersection of Greenwich street and Battery place, to, over and across Battery place

4582 to the edge of the Battery and State street; thence over, through and along the edge of the Battery and State street to Whitehall street; thence over, through and along Whitehall street to and connecting with the South Ferry, Hamilton Avenue Ferry, and Staten Island Ferry; and from the intersection of State street and Whitehall street over and across Whitehall street to Front street; thence over, through and along Front street to Coenties slip; thence over, through, along and across Coenties slip to the intersection of Coenties slip and
4583 Pearl street; thence over, through and along Pearl street to Hanover square; thence over, through and along Hanover square and Pearl street to John street; thence over, through and along John street and Burling slip to, over, along and across South street to and connecting with the Fulton ferry; and from the intersection of John street and Pearl street, crossing John street over, through and along Pearl street and Franklin square to New Bowery; thence over, through and along New Bowery and Chatham square to the Bowery; thence over, through and along the Bowery to Third avenue;
4584 thence over, through and along Third avenue to East Thirty-fourth street; thence over, through and along East Thirty-fourth street to and connecting with the Thirty-fourth street ferry; and from the intersection of East Thirty-fourth streef and Third avenue, crossing East Thirty-fourth street, over, through and along Third avenue to East Forty-second street; thence over, through, and along East Forty-second street to and across Fourth avenue to and connecting with the depot, known as the "Grand Central," occupied by the New York Central and Hudson River Railroad Company, the New York and Harlem Railroad Company, and the New

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York, New Haven and Hartford Railroad Company; and from the intersection of East Forty-second street and Third avenue, and crossing East Forty-second street, over, through and along Third avenue to East Ninety-second street; thence over, through, and along East Ninety-second street to, and connecting with the Astoria ferry; and from the intersection of Third avenue and East Ninety-second street, crossing East Ninety-second street, over, through and along Third avenue to East One Hundred and Twenty-ninth street (there connecting with the ferries having landings at or near Harlem bridge); thence over, through and along East One Hundred and Twenty-ninth street to the intersection of East One Hundred and Twenty-ninth street and the Harlem river; thence over and along the Harlem river to First avenue; thence over and across the Harlem river, connecting with the depot of the Portchester branch of the New York, New Haven and Hartford Railroad; and from the intersection of Third avenue and East One Hundred and Twenty-ninth street, over and across Third avenue, and over, through and along East One Hundred and Twenty-ninth street to Lexington avenue; thence over, through and along Lexington avenue to River street and the Harlem river; thence over, through and along River street and the southerly shore of the Harlem river to, and connecting with, the railway of the New York and Harlem Railroad at Fourth avenue; with a branch and turnout from the intersection of New Bowery and Chatham square, over, through and along Chatham square to Chatham street; thence over, through and along Chatham street to Park row; thence over, through and along Park row to Tryon row (there to connect with the railway to be laid

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4588 *Claimants' Exhibits.*

over the East river bridge for cars to be operated or propelled by steam); thence over, through and along, or in front of and around Tryon row to the Park; thence along the Park and over, through and along Centre street to Park street; thence over, through, and along Park street to Mott street, crossing over Mott street; thence over and through the block to Doyer street, crossing over Dover street; thence over and through the block to Pell street, crossing over Pell street; thence over, through, and along Pell street and intersecting the
4589 route hereinbefore fixed and determined over, through and along the Bowery; and with a siding for a turn around, commencing at the intersection of Coenties slip and Water street; thence over, through, and along Water street to Whitehall street; thence over, through, and along Whitehall street to and intersecting the route hereinbefore fixed and determined at the intersection of Front street and Whitehall street; and also a route of connection beginning at the intersection of Ninth avenue and West Ninety-second street, over, through and along West Ninety-second street to
4590 Eighth avenue; thence over, through and along Eighth avenue to River street and the Harlem river; thence over, through and along River street, and over and along the Harlem river, over and crossing the Harlem river at or near the High Bridge, to and connecting with the New York, Boston and Montreal Railroad, or the depot thereof, and to and connecting with the Spuyten Duyvil and Port Morris Railroad, or the depot thereof.

Resolved, That whenever either of the routes hereinbefore fixed and determined crosses a street, avenue, place or lands, such route includes and is intended to include, and shall be deemed to include

such crossing, and so much of said street, avenue, place or land as is there crossed, so as to allow and enable the construction of continuous and connected lines of railway along the route or crossing.

The second of said series of Resolutions is as follows, with the preamble thereto prefixed:

Whereas, It is considered by this Board of Commissioners desirable for the public convenience to fix and determine the route or routes for a steam railway or railways in the City of New York, and to locate the route or routes of such railway or railways over, along, through or across the streets, avenues, places and lands in the City and County of New York, as hereinafter mentioned. Now, therefore, 4592

Resolved, That this Board of Commissioners hereby fixes and determines the route or routes for such steam railway or railways, and locates the route or routes of such railway or railways over, along, through or across the streets, avenues, places or lands in the City and County of New York, as follows: Beginning on the south shore of the Harlem river, at Kingsbridge, and proceeding thence by a route which is (except for variations hereinafter made) the same as and coincident with the route or routes heretofore ascertained, designated and established for the Gilbert Elevated Railway Company, under, by, and pursuant to chapter 885 of Laws of 1872, chapter 837 of Laws of 1873, and chapter 275 of Laws of 1874, and (except as to said variations) as the said route was ascertained, designated and established by the two several reports of the two Boards of Commissioners appointed under the two acts first above mentioned, copies of which reports are now on file in 4593

4594 the office of the County Clerk of the City and County of New York, and the originals of which reports are in possession of the Gilbert Elevated Railway Company, and by, through, along and over all streets, avenues, and places included in and covered by said route and routes, and connecting lines and extensions belonging to the same, to a point coterminous with the routes and routes of the said the Gilbert Elevated Railway Company —the route or routes hereby determined upon (except as to said variations), coinciding with the

4595 route and routes covered by the charter of the Gilbert Elevated Railway Company, an existing corporation formed for the purpose provided for by chapter 606, Laws of 1875.

The route above fixed and determined upon, begins, continues and terminates as follows:

Commencing on the south shore of Harlem river, at Kingsbridge, thence through and along River street to Eighth avenue; thence over, through and along Eighth avenue to Ninety-second street; thence over, through and along Ninety-second street to Ninth avenue; thence over, through and

4596 along Ninth avenue to Fifty-third street; thence over, through and along Fifty-third street to Sixth avenue; thence over, through and along Sixth avenue to Amity street; thence over, through and along Amity street to South Fifth avenue; thence over, through and along South Fifth avenue to Canal street; thence over, through and across Canal street into West Broadway; thence over, through and along West Broadway to Chambers street; thence over, through and across Chambers street into College place; thence southerly over, through and along College place to Murray street; thence easterly over, through and along Murray

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street to Church street; thence southerly over, through and along Church street to New Church street; thence southerly over, through and along New Church street to, through, over and across Morris street to a point on the southerly line of Morris street, sixty-five feet from the southeasterly corner of Greenwich and Morris streets; thence southerly over and through private property, parallel to the easterly line of Greenwich street, a distance of thirty-five feet; thence over and on a curve of one hundred and eighty feet radius, intersecting the building line on the westerly side of 4598
Broadway, two hundred and two feet from the southerly corner of Morris street and Broadway to Bowling Green, west of the westerly line of Broadway, to and around Bowling Green park into Beaver street; thence over, through and along Beaver street to Pearl street; thence over, through and along Pearl street and New Bowery to Division street; thence over, through and along Division street to Chrystie street; thence over, through and along Chrystie street and Second avenue to Harlem river; thence through and along River street to Eighth avenue.

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Also, an extension from the junction of Fifty-third street over, through and along Sixth avenue to Fifty-ninth street.

Also, an extension from the junction of East Twenty-third street and Second avenue, over, through and along Twenty-third street to the Third avenue.

Also, an extension from the junction of East Forty-second street and Second avenue, over, through and along East Forty-second street to the Third avenue; thence to connect with the Grand Central Depot.

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Provided, however, that this Resolution is not intended to apply, and shall not be deemed to apply, to any street or part thereof upon which this Board of Commissioners is not authorized by chapter 606 of Laws of 1875 to fix, determine and locate a route or routes of railway.

Resolved, That whenever either of the routes or extensions hereinbefore fixed and determined crosses a street, avenue, place or lands, such route or extension includes and is intended to include, and shall be deemed to include, such crossing and

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so much of said street, avenue, place or lands as is there crossed, so as to allow and enable the construction of continuous and connected lines of railway along the route or extension so crossing.

Article VII.—The several conditions, requirements and particulars by said Board of Commissioners determined pursuant to section 5 of said chapter 606, Laws of 1875 (by a Resolution adopted at a meeting duly convened and held in the City of New York on the 4th day of October, 1875), are hereby set forth and embodied as component parts of these Articles of Association—which said Reso-

46 2

lution is in terms as follows:

Resolved, That the Commissioners appointed by the Mayor of the City of New York, under and in compliance with the provisions of chapter 606, Laws of 1875, having by public notice invited the submission of plans for the construction and operation of a railway or railways for the purpose provided for by said act, and having examined and considered the numerous plans and devices submitted to them, do hereby select and decide upon the plans, as follows, for the construction of such railway or railways, with the necessary turnouts,

4603

etc., upon the route or routes and in the locations determined by them by preambles and Resolutions adopted on the 3d day of September, 1875:

1. The general plan or plans of the structure shall be of an Elevated Railway, with the track or tracks supported upon a row or rows of columns; the track or tracks shall be carried by longitudinal girders, resting either upon the tops of the columns or upon transverse girders supported by the columns.

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2. Where the width of the street, between the curb-stones, does not exceed thirty-six feet, the plan of construction shall be as follows, as the company constructing the railway shall elect, *i. e.*, either—First, with a row of columns on the line of each curb, and a superstructure carrying two tracks upon transverse girders spanning the street; or, Second, with a row of columns upon the line of each curb, and a superstructure carrying a single track over each row of columns; or, Third, with gothic transverse arches spanning the roadway of the street from curb to curb and carrying longitudinal girders.

4605

3. Where the width of the street, between the curb-stones, is more than thirty-six feet, but less than fifty-five feet, the plan of construction shall be as follows, as the Company constructing the railway shall elect, *i. e.*, either—First, with a row of columns on the line of each curb, and a superstructure carrying two tracks on transverse girders spanning the street; or, Second, with two rows of columns, the one upon the line of either curb and the other along or near the centre line of the roadway of the street, and a superstructure carrying two tracks upon transverse girders spanning the

4606 portion of the roadway of the street between the two rows of columns—but this plan is allowed only in New Church street and in the case of a street where there is no existing street railroad upon the surface of the roadway; or, Third, with a row of columns upon the line of each curb, and a superstructure carrying a single separate track over each row of columns—but this plan is not allowed along or over Second avenue, between East Houston street and East Twenty-third street, or Fourth, with gothic transverse arches, spanning the road-
4607 way of the street from curb to curb and carrying longitudinal girders.

4. Where the width of the street or avenue, between the curb-stones, is fifty-five feet or more, the plan of construction shall be as follows, as the company constructing the railway shall elect, *i. e.*, either—First, with a row of columns upon the line of each curb, and a superstructure carrying two tracks upon transverse girders spanning the street; or, Second, with two rows of columns in the roadway of the street, and a superstructure carrying two tracks upon transverse girders—but no column
4608 authorized in this plan of construction shall be erected between any two tracks of street railroad upon the surface of the roadway; or, Third, with a row of columns upon the line of each curb, and a superstructure carrying a single separate track over each row of columns—but this plan is not allowed along or over Eighth or Ninth avenue, between West Sixty-first street and West One Hundred and Tenth street; or, Fourth, with gothic transverse arches spanning the roadway of the street from curb to curb and carrying longitudinal girders.

5. Whenever a column or row of columns is above authorized to be upon a line of curb, such column or row of columns shall be erected only within the line of curb-stones, and shall be there so situated and placed as not to obstruct vehicles or the ordinary traffic or travel in the roadway of the street.

6. There shall not be more than two rows of columns or more than two tracks in any one street or avenue or public place, except as hereinafter authorized. 4610

7. No column shall be erected between any two tracks of street railroad now upon the surface of the roadway of the street—except in New Church street, as hereinbefore authorized.

8. Except where the width of a cross street, between the curbs thereof, is fifty feet or more, every cross street shall be spanned by a single span, when and where the plan of construction used is one having a row of columns upon a curb line.

9. When and where the plan of construction used is one having two rows of columns in the roadway of the street, no column shall be erected within the curb lines of a cross street, elsewhere than upon the centre line of such cross street, but may be there erected. 4611

10. A single or double track may be placed between longitudinal girders and carried by iron floor-beams, the latter supported by the longitudinal girders.

11. Where columns are authorized to be in the roadway on each side of a street railroad track upon the surface of the roadway, the transverse

4612 distance between the columns shall be at least twenty-one feet in the clear.

12. The transverse diameter of a column authorized to be in the roadway of any street shall not exceed fifteen inches at the base, and thence for at least ten feet above the surface of the roadway; and the transverse diameter of a column authorized to be on the line of a curb shall not exceed twenty-six inches at the base, and thence for at least ten feet above the surface of the roadway.

4613 13. The transverse diameter of columns above indicated does not include fenders; and adequate fenders shall be fitted around the base of each column placed in the roadway, to prevent the hubs of the wheels of passing vehicles from striking the column.

14. Where authorized to be in the roadway, no column shall be nearer than five feet to the houseline of the cross street, but every column erected in the roadway of the street shall be set back at least five feet from that line.

4614 15. The longitudinal distance between the columns, when both rows are in the roadway, shall not be less than thirty-five feet.

16. The longitudinal distance between columns on the curb shall be at least twenty-five feet.

17. On curves of three hundred feet radius or less the longitudinal distance between the columns in the roadway may be reduced to not less than twenty-five feet.

18. No part of the girders or superstructure shall be less than fourteen feet above the level of the street, except on a summit, where, when neces-

sary, on account of grade, the height of the lowest part of the girders, above the roadway of the street, may be reduced to twelve feet.

19. The girders may be either plate or lattice, or any suitable form of truss, and shall not be continuous over more than two spans.

20. Upon every track there shall be two continuous longitudinal stringers, of sufficient size, of the best quality and kind of timber suitable for the purpose. The joints of such longitudinal stringers shall be scarfed and bolted, and such stringers 4616
shall be securely fastened to every support on which they rest, so as to tie the structure together and give it stiffness in a longitudinal direction. This requirement may be fulfilled either by longitudinal stringers under the rails, or by safety-guards of timber, if made to comply with the above conditions.

21. The material used for that part of the structure above the ground shall be wrought-iron or steel—except that the connections between the posts which form a cluster column may be of cast-iron—and except the rails, which shall be of steel 4617
—and except the ties or longitudinal stringers supporting the rails, which shall be of the best quality and kind of selected timber. The safety-guards, if of wood, shall be of the best quality and kind of timber. Wood shall not be placed in any position where it may not be readily renewed without interrupting the travel on the road.

22. The wrought-iron shall be of the following general character: Tough, highly fibrous, and of a quality which shall be in every respect equal to that used in first-class American iron railway bridges.

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23. No part of the structure shall be subjected to a greater strain of tension or compression, than nine thousand pounds to the square inch; and no part shall be subjected to a greater shearing strain than seven thousand five hundred pounds to the square inch; and the structure shall not be proportioned for a less moving load than twelve hundred pounds per lineal foot for each track.

24. The maximum deflection of any girder under the passage of a train shall never exceed one-fifteen hundredth (1/1500) of its length.

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25. The plates composing the longitudinal parts of a column or girder, shall be in single pieces, except in the case of a girder of more than forty feet in length.

26. All rivets shall be of double refined iron which shall have an ultimate tensile strength of sixty thousand pounds to the square inch. The rivet-holes shall be truly and accurately opposite each other; and the rivets shall enter the holes without drifting or forcing, and shall fill the holes.

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27. All parts which make up the section of a column, except where cluster columns are used, shall be of equal thickness and of uniform quality.

28. The strength of the columns shall be proportioned by Gordon's formula for the ratio of the diameter to the length, with five as a factor of safety.

29. The different parts of the structure and their connections shall be properly proportioned to resist all of the momentum of the train which can, by the application of brakes or in any other manner, be imparted to the structure.

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30. The foundations for the columns shall consist of brickwork, stonework or concrete.

31. The masonry for foundations, where the span is fifty feet, shall measure at least four and one-half feet square upon the top, at least six feet square at the bottom, shall be at least four feet in depth, and shall rest upon two thick blocks of granite or other flagging, three feet by six—so as to make a base for the masonry not less than six feet square. When the span is more than fifty feet the dimensions of the foundations shall be larger, and when the span is less than fifty feet, 4622
the dimensions of the foundations may be smaller; but the foundations must, in every case, have as much stability relative to load as is above required.

32. The earth is to be prepared for this masonry by being made firm and solid, and covered with a bed of good hydraulic mortar.

33. Every column or post shall be secured to the masonry by means of a heavy plate of cast-iron, so proportioned as to distribute the weight which comes upon it uniformly over the foundation; this plate shall be fastened by sufficiently 4623
strong wrought-iron bolts passing through the masonry—the bolts having heads which shall be upset and not welded, and having washers of sufficient size beneath the stones above-named and immersed in the bottom bed of hydraulic mortar. The cast-iron plate, its connections with the column, the wrought-iron bolts and their heads and washers, shall possess sufficient strength to receive and resist, equally well with the column, all strains which can come upon the latter. The cast-iron shall be of the best quality suitable for bed-plates

4624 which are to be covered under ground, and all castings shall be sound and fair.

34. All the iron-work beneath the surface of the street shall be covered with hydraulic mortar or in some way protected from rust.

35. Good hydraulic cement shall be used in the masonry; and Portland cement of the first quality shall be used in case the foundations are constructed of concrete. If bricks are used, they shall be hard burnt and of the best quality.

4625 36. The foundations, where necessary, shall be increased in area so that in no case shall a weight greater than two thousand pounds to the square foot come upon any base.

37. All wrought-iron work shall receive one coat of metallic paint and oil before leaving the shop, and immediately after erection shall receive at least two coats of good paint. All parts of the structure shall, where practicable, be made accessible for the purpose of painting; and shall be well protected from rust where not accessible.

4626 38. Efficient safety-guards shall be provided, so that, in case of accident, the cars shall be effectually prevented from leaving the structure.

39. The best form of continuous brakes, so arranged as to be under the control of the engineer, shall be applied to all trains, and to every car in each train.

40. Every switch shall be of such design that, if left open or placed wrong, it cannot break the main track, or offer any impediment which may cause the derailment of a passing train.

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41. Rails shall be of steel, not less in weight than fifty pounds per lineal yard; they shall be laid and fastened in the best manner as regards security, level and parallelism; and great attention must be given to the rail joints.

42. The railway must be equipped with the most approved system of signals to guard against accidents; and there sahll be the necessary telegraph and signal devices.

43. Stations shall be so arranged as to be convenient of access from the street.

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44. There shall be no steps (other than those leading from the street), sills, or any other projections about stations, over which persons can trip or stumble.

45. The platforms of stations shall be on a level with the platform of the cars; and nothing shall intervene between a platform and the cars that must be stepped over to enter a car.

46. Each station shall have ample space, under cover, to accommodate the passengers.

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47. Where two rows of columns are authorized and either row is placed in the roadway of the street, the columns shall be erected in pairs, and both columns of each pair shall stand in line upon a line at right angles to the direction of the length of the street.

48. The stairs and all parts of the stations, except the platform, doors, windows, and inside sheathing, and except the tread of the stairs, shall be of iron.

49. All station platforms and stairs shall be protected by a substantial iron railing.

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50. Every axle shall be of steel of a quality best suited to the purpose, and shall be subjected to such tests and safeguards, and be of such dimensions, as are usual in first-class railway practice.

51. Every wheel, whether of a car, locomotive or tender, shall have a tyre of steel of the best quality and form suited to the purpose, and shall be turned on the tread. The wheels shall be fitted with the best known means of deadening noise and preventing jars.

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52. Authority is given for construction of such supports, turn-outs, switches, sidings, connections, landing places, stations, buildings, platforms, stairways, elevators, telegraph and signal devices, and such other requisite appliances, upon the route or routes, and in the locations determined by the Commissioners, as shall be proper for the purpose of rapid transit railways, and as shall be necessary to meet the requirements of the traveling public.

53. All car axles shall be provided with the best devices used in railway practice to catch the axles and prevent them from getting adrift in case of

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fracture.

54. The structure shall present a substantial and tasteful appearance.

55. On River street westerly from Fourth avenue—and on Eighth avenue northerly from One Hundred and Fifty-fifth street—the railway may be constructed as a surface railroad upon the grade of the street; it shall be a double track road.

56. All of the materials used in the construction of the work shall be of the best quality for the purposes for which they are to be applied; and the

work shall be executed in the best style of the arts, and in a workmanlike manner.

57. It is the intention and spirit of these specifications to provide in every respect for a first-class structure, and no omissions of specific requirements to this effect, if any exist, shall in any case be construed in any way to invalidate this general requirement.

58. These specifications shall be incorporated into and shall constitute an essential part of every contract made by the company for material or construction. 4634

Article V. The several conditions, requirements and particulars by said Board of Commissioners determined pursuant to section 6 of said chapter 606, Laws of 1875 (by a Resolution of six principal divisions adopted at a meeting duly convened and held, in the City of New York, on the 4th day of October, 1875), are hereby set forth and embodied as component parts of these Articles of Association—which said Resolution is in terms as follows: 4635

Resolved: First—That the time within which the company to be formed and organized by this Board of Commissioners (and which shall be known as the Manhattan Railway Company) shall construct the several portions of the railway and railways, and shall have the same ready to be operated, along and upon the route or route heretofore, by preambles and resolutions duly adopted on the 3d day of September, 1875, fixed, determined and located by this Board of Commissioners, be and hereby is fixed and determined as follows;

4636 *Claimants' Exhibits.*

1. The portion of the railway or railways to be constructed from Tryon Row, along the easterly side of the city, to East Fifty-ninth street, shall be constructed and be ready to be operated before or by the 1st day of May, 1877;

2. The portion of the railway or railways to be constructed from East Fifty-ninth street, along the easterly side of the city, to the Harlem river, shall be constructed and be ready to be operated before or by the 1st day of December, 1877;

4637 3. The portion of the railway or railways to be constructed from Harlem Bridge to the High Bridge, shall be constructed and be ready to be operated before or by the 1st day of December, 1878;

4. The portion of the railway or railways to be constructed from the line of Chambers street, along the westerly side of the city, to West Fifty-ninth street, shall be constructed and be ready to be operated before or by the 1st day of May, 1877;

5. The portion of the railway or railways to be
4638 constructed from West Fifty-ninth street, along the westerly side of the city and to the northerly terminus of the line of the route on the westerly side of the city, shall be constructed and be ready to be operated before or by the 1st day of June, 1878; and

6. The remainder of the railway or railways to be constructed upon the route or routes so as aforesaid fixed, determined and located on the 3d day of September, 1875, shall be constructed and be ready to be operated before or by the 1st day of June, 1878.

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Second—That each of the said periods and limitations of time hereinbefore referred to and prescribed, as the time within which the several sections or portions of railway or railways shall be constructed and be ready to be operated, is, however, subject to this proviso and reservation, as follows: That the time, if any, unavoidably consumed by the pendency of legal proceedings, or by the interference of the public authorities, shall not be deemed a part of any period of the time within which construction and completion of the railway or railways is required to be made. But the time, 4640
if any, during which such unavoidable delay shall continue, shall be added to each of the periods hereby otherwise limited for construction and completion of the railway or railways.

Third—That the rates of fares authorized and allowed to be charged and collected upon trains to be run upon such railway or railways or upon any portion thereof, shall be only as follows—the same being the rates of fares by this Board of Commissioners fixed and determined as the maximum rates to be paid for transportation and conveyance over such railway or railways—as follows: 4641

1. Upon trains and in cars other than those hereinafter designated as "commission" trains and cars, for any distance under five miles, not to exceed ten cents; and not to exceed two cents per mile for each mile or fraction of a mile in excess of a mile over five miles, until the fare shall amount to not to exceed fifteen cents for a through passenger from and between the Battery, or any point to the north thereof, and the intersection of Third avenue and the Harlem river; and from and between the Battery, or any point to the north

4642 thereof, and the High Bridge (running upon whether the easterly or the westerly side of the city), not to exceed seventeen cents for a through passenger. For the entire distance, or any part of it, from and between the Battery and either East or West Fifty-ninth street, the fare shall not exceed ten cents; and

2. Upon what are hereinafter designated as "commission" cars or trains, to be run during certain hours at reduced rates of fare, for the accommodation of the public and of the laboring classes, 4643 the rate of fare shall not exceed five cents from and between the Battery, or any point to the north thereof, and either East or West Fifty-ninth street; and shall not exceed five cents for any distance not exceeding five miles; and shall not exceed seven cents for a through passenger from and between the Battery, or any point to the north thereof, and the Harlem river; and shall not exceed eight cents for a through passenger, on any of said "commission" trains or cars from and between the Battery, or any point to the north thereof, and the High Bridge.

4644 Fourth—The Company shall run special trains or cars, at reduced rates of fares, as aforesaid, for the accommodation of the public and of the laboring classes, daily, during the hours between 5:30 o'clock and 7:30 o'clock A. M., and 5 o'clock and 7 o'clock P. M. Such trains or cars shall be known and designated as "commission" cars or trains; shall be in numbers sufficient to accommodate the public and the laboring classes during the hours indicated, and shall be run at intervals really to afford such accommodation; they shall stop regularly at all regular stations of the Company, and

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shall be run at the rate of speed of the other local trains of the Company. During said hours a seat shall be provided in a "commission" car for every passenger on the train who desires to travel in a "commission" car; otherwise, any passenger desiring and demanding a seat in such a car, shall be entitled to occupy a seat in another car upon the train, upon payment of only the reduced rate of fare to be paid for transportation and conveyance in a "commission" car.

Fifth—A seat in a car other than a "commission" car shall (except during the hours above indicated) be provided for every passenger upon any train, who desires and demands such a seat; otherwise, and except during said hours, such passenger shall be entitled to travel without payment of fare. As a part of any train of cars, there may be one or more of the kind known as "saloon cars" or "drawing-room cars," with special arrangements for extra comfort and space; and there may be demanded of, charged to, and collected from each passenger who shall, when a seat in another car is provided, occupy a seat in such a "saloon car" on "drawing-room car," an extra (though not unreasonable) rate of fare, in addition to the rates hereinbefore fixed and determined.

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Sixth.—The Company is not required to construct a railway upon any portion of the route along Second avenue, if a railway shall, within the time hereinbefore limited for construction of a railway along Second avenue, be constructed and completed upon the route fixed and determined by this Board of Commissioners along Third avenue.

Article IX.—It is hereby agreed that the sev-

4648 eral portions of the railway or railways shall be constructed and ready for operation, each within the time for completion of such portion fixed and determined by said Resolution of the Board of Commissioners, adopted October 4, 1875—upon the condition, however, and provided, that, upon any portion of the route or routes of such railway or railways, which is coincident with a portion of the route of either the Gilbert Elevated Railway Company or the New York Elevated Railroad Company, no railway of the "Manhattan Railway Com-
4649 pany" is or shall be required to be constructed until the lapse not only of the time in said Resolution limited, but also of, in addition to such time, a time equal to the time allowed to said Gilbert Elevated Railway Company, or, as the case may be, to the said New York Elevated Railroad Company, for construction of a railway along and upon such portion of the route.

Article X.—In case the several portions of such railway or railways shall not be completed, each within the time and upon the conditions hereinbefore for it provided, the rights and franchises
4650 acquired by said corporation for and as to any portion of such railway or railways not so completed shall be released and forfeited to the Supervisors of the County of New York.

To all which Articles of Association we, the undersigned, stockholders in said "Manhattan Railway Company," have assented and hereto subscribe our names this day of November, 1875.

Mr. Harrison also submitted a form for subscription to the capital stock of said Company, which had been prepared by direction of the Board

and after consultation with Messrs. Emott and Nash. It was ordered to be printed in the minutes, and is as follows: 4651

Manhattan Railway Company.

Subscriptions to the capital stock.

Each of us, the undersigned, hereby subscribes (subject to the distribution to be made to him) to the capital stock of the "Manhattan Railway Company," which is to be incorporated and organized under the provisions of chapter 606, Laws of 1875, with and according to Articles of Association heretofore prepared, in compliance with the requirements of said Act, by the Board of Commissioners appointed by the Mayor of the City of New York pursuant to the provisions thereof. 4652

Each of us hereby promises, covenants, and agrees—to and with each other subscriber hereto, each for and in consideration of the promise, covenant and agreement of such other, and to and with the Board of Commissioners, heretofore appointed by the Mayor of the City of New York and organized pursuant to the provisions and requirements of chapter 606, Laws of 1875, each for and in consideration of such distribution of shares as may to him by said Board of Commissioners, in the discretion of the Board, be made—to take and pay for the number of shares hereinbelow by him written opposite to his name, of the Capital Stock of said Company, or such, if any, other number of such shares, not exceeding the number hereinbelow by him written opposite to his name, as may be by said Board of Commissioners, in the discretion of said Board, allotted to him. 4653

It is understood, and hereby by each of us for himself agreed, that said Board of Commissioners shall have and exercise the right and discretion

4654 to accept only such of the subscribers to said stock as may by said Commissioners, or a majority of them, be considered most responsible and most favorable to the accomplishment of the purposes provided for by said Act; and that said Board of Commissioners shall have and exercise the right and discretion to distribute to any subscriber who may be so accepted only so many of the shares by him written opposite to his name as said Commissioners, or a majority of them, may determine.

Each of us now pays in cash, on subscribing for
4655 such shares, five per centum of the par value of the number of shares by him hereinbelow written opposite to his name; and each of us hereby, for and upon said considerations, agrees that the remainder of the amount of the par value of such, if any, number of shares as may, in the discretion of the Board of Commissioners, be allotted to him, shall be paid promptly and upon demand, in installments, as and whenever the Board of Directors of the Company shall, from time to time, assess and call for the same.

And each of us who shall become a stockholder
4656 in said Corporation for himself agrees, in consideration of the premises, to be bound by the Articles of Association prepared, as aforesaid, for the Company by said Board of Commissioners; and each of us hereby authorizes and empowers the persons, or any one or more of them who shall, pursuant to said Act, be elected to be the Directors for the first year of said Corporation, in his behalf, to subscribe said Articles of Association.

Dated, New York, October 29, 1875.

Name and Address. *Number of Shares.*

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Upon motion of Mr. Canda, seconded by Mr. Brown, it was

Resolved, That the Secretary be and hereby is directed to have prepared a suitable book of subscriptions to the capital stock of said Company, with the foregoing form of subscriptions printed at the head of each page.

Upon motion of Mr. Brown, seconded by Mr. Delamater, it was

Resolved, That Charles J. Canda be and hereby is selected and appointed to be the Treasurer of this Board, with directions to open an account at the Corn Exchange Bank by deposit there of the moneys to be paid in by subscribers on subscribing to the capital stock of the Company which is to be organized.

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Upon motion of Mr. Mott, seconded by Mr. Brown, it was

Resolved, That the Treasurer be and hereby is directed to give to each subscriber to the capital stock a receipt in form, as follows:

Manhattan Railway Company.

4659

New York, October 29, 1875.

Received from dollars, in cash, the same being five per centum of the par value of the number of shares by him this day written opposite to his name in the book of subscription to the Capital Stock of the "Manhattan Railway Company."

If there shall not be distributed to him a number of shares equal to said number by him written opposite to his name, then, and in that case, there shall, upon demand, be returned to him so much

4660 of the amount now receipted for, as is in excess of five per centum of the par value of the number of shares, if any, distributed to him.

The Commissioners reserve to themselves the right to reject any subscriber to the capital stock —and also reserve to themselves the right to distribute to any subscriber a number of shares less than the number by him subscribed for.

C. J. Canda, As Treasurer of the Board of Commissioners appointed by the Mayor under chapter 606, Laws of 1875.

4661 Upon motion of Mr. Delamater, adjourned to meet on the 29th inst., at 9:45 o'clock A. M., at the Corn Exchange Bank.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Corn Exchange Bank, 13 William Street.

Friday, October 29, 1875—9:45 o'clock A. M.

The Board met, pursuant to adjournment, at 9:45 o'clock A. M.

4662 Present—Four of the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, and Charles J. Canda.

Upon motion of Mr. Brown, the reading of the minutes was dispensed with.

The meeting was with open doors, and there were present, among others, Mr. Emott, Special Counsel to the Board, Mr. Navarro, General Horace Porter and others, with Messrs. Lowrey, Alexander and Ashbel Green, their Counsel, and Mr. Scott, Mr. Dows and Mr. Courtright.

4663

At 10 o'clock, precisely, the President announced that the book for subscriptions to the Company to be organized under chapter 606, Laws of 1875, is now opened, pursuant to public notice heretofore advertised; that the Commissioners reserve the right to reject in their discretion any subscriber; that they reserve also the right to distribute to any accepted subscriber any number of shares in their discretion, not exceeding the number by such subscriber to be written opposite to his name; and that five per centum of the par value of the number of shares subscribed for is required to be paid in

4664

cash at the time of subscribing.

In the book of subscription there were thereupon subscriptions by twenty-six subscribers for, in the aggregate, twenty thousand shares, in various amounts; and one hundred thousand dollars in cash, in the aggregate, were immediately paid in, to the Treasurer of the Board, by the subscribers, upon their subscriptions. Some of the subscriptions being by attorney, the attorney in each case produced and filed with the Board a formal power of attorney.

4665

A receipt was by the Treasurer given forthwith to each subscriber for the amount by such subscriber so paid in—the receipt being in the form at the last meeting of the Board authorized to be given; and an account was, at once, opened by the Treasurer with the Corn Exchange Bank as at the last meeting directed, by deposit of the one hundred thousand dollars so received in cash.

The entire amount of the capital stock having thus been subscribed for, it was, upon motion of Mr. Canda, seconded by Mr. Brown.

Resolved, That the book of subscriptions be and hereby is closed.

4666 *Claimants' Exhibits.*

Upon motion of Mr. Brown, seconded by Mr. Canda, it was

Resolved, That the doors be now closed, and that the Board continue in session with closed doors.

Upon motion of Mr. Delamater, seconded by Mr. Canda, it was

Resolved, That each and all of the twenty-six subscribers to the capital stock be and are now accepted by this Board; and that there be and now is distributed to each subscriber the number
4667 of shares by him subscribed for.

Upon motion of Mr. Brown, seconded by Mr. Delamater, the Secretary was directed to give to each subscriber formal notice of call of a meeting of the subscribers, on the 8th of November, 1875, at No. 13 William street, to elect the first Directors of the Company.

Upon motion of Mr. Canda, adjourned, subject to the call of the President of the Board, to meet at such time and place as the President may direct.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

4668

City of New York, Office J. & W. Seligman, 21 Broad Street.

Tuesday, November 9, 1875—12 o'clock M.

The Board met, upon the call of the President, at the office of Messrs. J. & W. Seligman, No. 21 Broad Street.

Present—Three of the Commissioners, viz.: The President, Cornelius H. Delamater, and Jordan L. Mott.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

4669

The Secretary reported that, in compliance with the instructions at the meeting on the 29th ult. given, he that day gave, to each of the subscribers to the capital stock of the Company to be organized, a written notice, served personally, as follows:

Office Board of Commissioners of Rapid Transit, New York, October 29, 1875.

Sir—By direction of the Board of Commissioners appointed by the Mayor in compliance with the provisions of chapter 606, Laws of 1875, you are 4670
hereby notified that a meeting of the subscribers to the capital stock of the "Manhattan Railway Company" is called for organization—the meeting to be held at 12 o'clock M. on the 8th day of November, 1875, at No. 13 William street, in the City of New York.

Very respectfully, Burton N. Harrison, Acting as Secretary.

The President called attention to the fact that the Board has not yet appointed inspectors of election of Directors for the Company to be organized under chapter 606, Laws of 1875—and informed the 4671
Board that the subscribers to the capital stock having met on the 8th inst., pursuant to the notice to them severally given, had adjourned to the 10th inst., awaiting notice of appointment of the inspectors.

Upon motion of Mr. Mott, seconded by Mr. Delamater, Messrs. Charles H. Clayton and J. A. Cowing were appointed to be inspectors of the first election of Directors of the Manhattan Railway Company.

Upon motion of Mr. Delamater, adjourned to

1672 the 12th inst., at 2 o'clock P. M., then to meet at the Mayor's office.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Mayor's Office.

Friday, November 12, 1875—2 o'clock P. M.

The Board met, pursuant to adjournment, at 2 o'clock P. M.

4673 Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Mott, the reading of the minutes was dispensed with.

The Secretary laid before the Board the following original papers:

State, City and County of New York, ss.:

On this 10th day of November, in the year of our Lord one thousand eight hundred and seventy-five, before me, a Notary Public in and for the
4674 State of New York, duly commissioned and sworn, personally came Charles H. Clayton and James A. Cowing, and each of them being by me duly sworn, did take and subscribe an oath as follows: "I do solemnly swear that I will faithfully perform the duties of an Inspector of the election now to be held for Directors of the Manhattan Railway Company, with strict impartiality and according to the best of my ability."

In witness whereof, I have subscribed my name, and caused my official notarial seal to be hereunto affixed, the day and date first above written.

James Clyne, Notary Public, Kings County.

(Seal)

4675

We, the undersigned, duly sworn and qualified as Inspectors for the election of Directors for the Manhattan Railway Company, do hereby certify that at an election held at No. 13 William street, in the City of New York, on Wednesday, the tenth day of November, 1875—the total number of shares voting being nineteen thousand and nine hundred and eighty shares (19,980)—the following-named persons received the number of votes set opposite their respective names for Directors of the said Manhattan Railway Company, viz.:

4676

19,980	Cornelius K. Garrison,	(19,980)
19,980	George M. Pullman,	do
19,980	Horace Porter,	do
19,980	Jose F. Navarro,	do
19,980	Milton Courtright,	do
19,980	William L. Scott,	do
19,980	John F. Tracy,	do
19,980	David Dows,	do
19,980	John Ross,	do

And the said Inspectors do therefore determine and declare that the following-named persons were, at the said election, by the greatest number of votes, duly elected as Directors of the said Manhattan Railway Company for the ensuing year, viz.:

4677

Cornelius K. Garrison,
George M. Pullman,
Horace Porter,
Jose F. Navarro,
Milton Courtright,
William L. Scott,
John F. Tracy,
David Dows,
John Ross.

1678 *Claimants' Exhibits.*

In witness whereof, we have hereunto subscribed our names this tenth day of November, in the year 1875.

J. A. Cowing, Charles H. Clayton, Inspectors of Election.

Wednesday, November 10, 1875, at 2 o'clcok P. M., a meeting of the Board of Directors of the Manhattan Railway Company was held at No. 13 William street, immediately after the adjournment of the Stockholders' meeting.

1679 Present—Messrs. Porter, Navarro, Courtright, Tracy, Dows and Ross.

Mr. David Dows was appointed to the chair and Horace Porter Secretary, both *pro tem.*

Mr. Tracy offered the following resolutions:

Resolved, That this Board now proceed to the election of a President, Treasurer, and Secretary.

Resolved, That the office of Treasurer and Secretary be held by the same individual.

Which resolutions were unanimously passed.

1680 The election then took place by ballot, and Milton Courtright was unanimously elected President; and Jose F. Navarro was unanimously elected Treasurer and Secretary.

David Dows, President.

Horace Porter, Secretary.

All of those original papers were ordered to be placed on file.

Upon motion of Mr. Delamater, seconded by Mr. Canda, it was

Resolved, That the Secretary be and hereby is directed to demand and require, in the name of

the Board, execution and delivery, before or on the 17th inst., by the New York Elevated Railroad Company and by the Gilbert Elevated Railway Company, of the bonds to them respectively heretofore forwarded for execution.

Upon motion of Mr. Canda, adjourned to the 18th instant at 2 o'clock P. M., then to meet at the Mayor's Office.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Mayor's Office. 4682

Thursday, November 18, 1875—2 o'clock P. M.

The Board met, pursuant to adjournment, at 2 o'clock P. M.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

Upon motion of Mr. Delamater, the reading of the minutes was dispensed with.

The Secretary reported that, in compliance with the instructions at the meeting on the 12st inst. 4683 given, he that day addressed to the Gilbert Elevated Railway Company and to the New York Elevated Railroad Company communications as follows:

New York, November 12, 1875.

To the President and Directors of the Gilbert Elevated Railway Company:

Gentlemen—I am directed by the Board of Commissioners appointed by the Mayor under chapter 606, Laws of 1875, to notify the Gilbert Elevated Railway Company, as I now do, that said

4684 Board of Commissioners requires and demands execution and delivery by said Company, before or on the 17th inst., of the Draft Bond and obligation to "the people of the State of New York" which was heretofore prepared by the Board of Commissioners and forwarded to you.

The Bond is in two hundred and fifty thousand ($250,000) dollars—is to be executed by the President and Treasurer of the Company, in the name and under the Corporate seal of the Company, with such sureties as may by the Company be procured, 4685 and by the Board of Commissioners be found satisfactory, and all in performance of the contract and agreement of the Company as expressed in the Resolutions of your Board of Directors of September 2, 1875.

Very respectfully, Your obedient servant, Burton N. Harrison, Acting as Secretary.

New York, November 12, 1875.

To the President and Directors of the New York Elevated Railroad Company:

4686 Gentlemen—I am directed by the Board of Commissioners appointed by the Mayor under chapter 606, Laws of 1875, to notify the New York Elevated Railroad Company, as I now do, that said Board of Commissioners requires and demands execution and delivery by said Company, before or on the 17th inst., of the Draft Bond and obligation to "the people of the State of New York" which was heretofore prepared by the Board of Commissioners and forwarded to you.

The Bond is in two hundred and fifty thousand ($250,000) dollars—is to be executed by the President and Treasurer of the Company, in the name

4687

and under the Corporate seal of the Company, with such sureties as may by the Company be procured, and by the Board of Commissioners be found satisfactory, and all in performance of the contract and agreement of the Company, as expressed in the Resolution of your Board of Directors of August 27, 1875.

Very respectfully, Your obedient servant, Burton N. Harrison, Acting as Secretary.

The Secretary also reported that the Bond required of the Gilbert Elevated Railway Company has been executed; and that the one required of the New York Elevated Railroad Company is promised to be executed in a day or two, and as soon as one of the proposed sureties, who is now absent, shall return to the city.

4688

Mr. Harrison, Counsel to the Board, submitted the draft by him made of the certificate, by the first clause of section 9, chapter 606, Laws of 1875, required to be delivered by the Commissioners to the Directors of the Manhattan Railway Company, which certificate was thereupon signed by all the Commissioners, in duplicate—and was verified, in duplicate, by the oath of three of the Commissioners, before a Justice of the Supreme Court—and is as follows:

4689

Certificate of Articles of Association and of the Organization of the Manhattan Railway Company—made in compliance with the requirements of section 9 of chapter 606, Laws of 1875.

New York, November 18, 1875.

We, the undersigned, the Commissioners appointed by the Mayor of the City of New York, under the provisions of chapter 606, Laws of 1875,

4690 do hereby certify, in duplicate, that the paper hereto annexed, and marked A, correctly sets forth the articles of association by us prepared for the Manhattan Railway Company; and that the papers hereto annexed, and marked B and C, respectively, correctly set forth the organization of the said Company for the purposes in chapter 606, Laws of 1875, mentioned and provided for—the said papers being extracts from the minutes of proceedings of the Board of Commissioners of which we are severally members as aforesaid.

4691 In witness whereof, we have hereunto set our hands this 18th day of November, 1875, in the City and County of New York.

Joseph Seligman,
Lewis B. Brown,
C. H. Delamater,
Jordan L. Mott,
(Seal) C. J. Canda.

Attest:

Burton N. Harrison, Acting as Secretary to the Board of Commissioners.

4692 City and County of New York, ss.:

Before me, Charles Donohue, a Justice of the Supreme Court, this 18th day of November, 1875, appeared Joseph Seligman, Lewis B. Brown, and Cornelius H. Delamater, to me personally known, and known to be three of the Commissioners heretofore appointed by the Mayor of the City of New York, under chapter 606, Laws of 1875; and each of them, being by me sworn, deposes and says that he has read the foregoing certificate by him and other subscribed, with the papers therein referred

to and thereto annexed, and knows the contents thereof, and that the same is true to his knowledge.

Joseph Seligman,
Lewis B. Brown,
C. H. Delamater.

Sworn to before me, this 18th day of November, 1875.

Chas. Donohue, J. S. C.

A. 4694

Articles of Association for the "Manhattan Railway Company," prepared pursuant to Chapter 606, Laws of 1875, by the Board of Commissioners appointed by the Mayor of the City of New York in compliance with the provisions of said Act.

(The Articles of Association which are made a part of the above certificate, and marked A, are those spread upon the minutes of the meeting held October 27, ult., and appearing at printed pages 1295-1318 inclusive, and need not be here repeated.)

B. 4695

(The paper which is made a part of the above certificate, and marked B, is the certificate of James Clyne, Notary Public, and the certificate of J. A. Cowing and Charles H. Clayton, Inspectors of Election, which are spread upon the minutes of the meeting held November 12, inst., and appearing at printed pages 1328-1330, and need not be here repeated.)

C.

(The paper which is made a part of the above certificate, and marked C, is the certificate of David Dows, President, and Horace Porter, Secre-

4696

tary, which is spread upon the minutes of the meeting held November 12, inst., and appearing at printed pages 1330-1331, and need not be here repeated.)

Upon motion of Mr. Canda, seconded by Mr. Mott, it was

Resolved, That the Secretary be and hereby is directed to deliver, for the Commissioners, the said certificate in duplicate to the Directors of the Manhattan Railway Company, before or on the 20th day of November, inst., as is by the law required to be done.

4697

Upon motion of Mr. Canda, seconded by Mr. Brown, it was

Resolved, That the Board do now adjourn, subject to the call of the President.

Burton N. Harrison, Acting as Secretary.

Board of Commissioners of Rapid Transit.

City of New York, Office of C. J. Canda, No. 214 Broadway.

Thursday, December 2, 1875—2 o'clock P. M.

4698

The Board met upon the call of the President, at 2 o'clock P. M., at the office of C. J. Canda, No. 214 Broadway.

Present—All of the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

The printed minutes of the meetings of the Board held August 23, 24, 25, 26, 27, 30 and 31, September 1, 2, 3, 6, 8, 10, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 27, 28, 29 and 30, October 1, 2, 4, 6, 18, 25, 27 and 29, and November 9 and 12, 1875, re-

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spectively, were read, and, upon motion of Mr. Delamater, were approved.

The Secretary reported that the Certificate of the Articles of Association and of the Organization of the Manhattan Railway Company was, on the 19th ult., delivered to the Directors of that Company, in duplicate, in compliance with the directions of the Board at the meeting on the 12th ult. given.

The Secretary further reported that, within five days after the reception by the Directors of such certificate, three of them made affidavit, in duplicate, that the full amount of stock has been subscribed in good faith, and the prescribed percentage paid in cash thereon, and that it is intended, in good faith, to construct, maintain and operate the railway or railways in the Articles of Association mentioned; and that the said Directors have filed said Certificate and Articles in the office of the Secretary of State, and a duplicate of the same in the office of the Clerk of the City and County of New York; and that the papers so filed consist of (1) the Articles of Association, signed with the original signatures of the 27 subscribers to the said Articles and to the Capital Stock of the Company; (2) the affidavit of the three Directors; and (3) the Certificate which was executed by all the Commissioners, and verified by the oath of three of the Commissioners before a Justice of the Supreme Court, on the 18th ult.—which said affidavit of the three Directors is as follows:

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4701

In the Matter of The Organization of The Manhattan Railway Company, under the Provisions of Chapter 606 of the Laws of 1875.

4702 City and County of New York, ss.:

Mr. Courtright, Jose F. Navarro and William L. Scott, being each severally and duly sworn, depose and say:

That each one of them is a Director of the Manhattan Railway Company, a Company authorized and organized by Commissioners appointed by the Mayor of the City of New York, in pursuance of chapter 606 of the Laws of 1875.

That each of said deponents was duly elected a Director of said Company at a meeting of the
4703 Subscribers to the Capital Stock thereof for the organization of said Company, duly called by said Commissioners.

That the amount of Stock of said Company, fixed and determined by the said Commissioners, is Two Millions of Dollars; and that the percentage thereof to be paid in cash on subscribing for shares of said Capital Stock is five per cent. That the full amount of said Stock has been subscribed in good faith; and the said prescribed percentage has been paid in cash thereon; and that it is intended in good faith to construct, maintain and operate the
4704 Railway or Railways as provided in the said Articles of Association and the specifications prescribed by the Commissioners of said Manhattan Railway Company mentioned—and further say not.

M. Courtright,
J. F. Navarro,
Wm. L. Scott.

Sworn and subscribed to this 24th day of November, A. D. 1875.

William H. Bowers, Notary Public, N. Y. Co.
(Seal)

4705

The following communication was laid before the Board by the President:

Office New York, Elevated Railroad Company, No. 7 Broadway, New York, December 2, 1875.

Joseph Seligman, Esq., President Rapid Transit Commission:

Sir—The New York Elevated Railroad Company, being in doubt as to the particular location of the line or route intended by your Board for this Company, to connect its railroad from its present terminus at the intersection of Greenwich street and Battery Place with the South, Hamilton Avenue and Staten Island Ferries, and thence to Front street—I respectfully ask that the Commission will define and establish a route of such location as will admit of trains being run with safety at a moderate speed, together with a loop line or siding by which to return. A tracing of the line and siding, upon the shortest radii practicable for such purpose, is hereto attached.

4706

Very respectfully, your obed't, etc. M. Courtright, President.

4707

Upon motion of Mr. Brown, seconded by Mr. Canda, it was unanimously

Resolved, That, in pursuance of the powers and authority conferred upon us by chapter 606, Laws of 1875, we do hereby fix and determine the route or routes by which the New York Elevated Railroad, an elevated steam railway, now, and at the time said law was enacted, in actual operation, may connect with other steam railways, or the depots thereof, and with steam ferries, as follows:

Beginning at the intersection of Greenwich

4708 street and Battery Place, to, over and across Battery Place to the edge of the Battery, thence over and across the corner of the Battery to a point nearly opposite Bridge street; thence over and along a line near the edge of the Battery and State street to a point nearly equidistant from Pearl and Front streets; thence over and across the corner of the Battery to the Staten Island Ferry and other steam ferries; thence over and along the edge of the Battery, and over and across Whitehall street to the intersection of Whitehall and
4709 Front streets; thence over and along Front street and elsewhere, as was heretofore and on the 2d day of September, 1875, determined; and also from Front street over and across the corner of the Battery again to intersect the route as above fixed and determined, connecting, by a siding, the portion of the route along Front street with the portion of the route at the point above described as "nearly equidistant from Pearl and Front streets."

The said route, as hereby fixed and determined, is shown by a red line upon a map hereto annexed and identified by the signatures of the several
4710 members of this Board of Commissioners this day upon said map made.

Provided, however, that the location of the route herein fixed and determined is subject to such variation as may be by the proper authorities of the City of New York required to be so made by the Company as to cause the least obstruction or injury to the Battery consistent with an adherence to the route substantially as herein above described and as shown upon said map.

The Secretary reported that the Bond demanded of the New York Elevated Railroad Company has been delivered; and, upon motion of Mr. Mott, seconded by Mr. Canda, it was

4711

Resolved, That the sureties upon said Bond be and hereby are found satisfactory, and that said Bond be and hereby is accepted.

The Minutes of this meeting as they appear above, and the Minutes of the meeting held on the 18th ult., as they appear above, were read, and, on motion of Mr. Mott, were approved.

Upon motion of Mr. Brown, adjourned subject to the call of the President or of any two of the Commissioners.

Burton N. Harrison, Acting as Secretary.

4712

Board of Commissioners of Rapid Transit.

City of New York, Office of C. J. Canda, 214 Broadway.

Saturday, December 11, 1875—2 o'clock P. M.

The Board met at 2 o'clock P. M., at the office of C. J. Canda, No. 214 Broadway.

Present—All the Commissioners, viz.: The President, Lewis B. Brown, Cornelius H. Delamater, Jordan L. Mott, and Charles J. Canda.

4713

The Secretary laid before the Board the following communication addressed to him by two of the Commissioners, and stated that it was in compliance with the direction to him, thus given, that notices of the meeting had been sent:

New York, December 10, 1875.

To Burton N. Harrison, Esq., Acting as Secretary:

Sir—The Board of Commissioners appointed by the Mayor under chapter 606, Laws of 1875, adjourned subject to the call of the President or of any two Commissioners.

Claimants' Exhibits:

1714

You will please notify the several members of the Board of call of meeting to be held on the 11th inst., at 2 o'clock P. M., at the office of C. J. Canda, and oblige,

Very, etc., C. J. Canda, Jordan L. Mott.

The President reported that the Bond demanded of the Gilbert Elevated Railway Company has been delivered; and, upon motion of Mr. Canda, seconded by Mr. Mott, it was:

Resolved, That the sureties upon said Bond be
1715 and hereby are found satisfactory, and that the said Bond be and hereby is accepted.

Upon motion of Mr. Delamater, seconded by Mr. Mott, it was

Resolved, That the Treasurer be and hereby is authorized and directed to pay over to the Manhattan Railway Company, of the moneys received by him on the 29th October last from subscribers to the capital stock of that Company, so much as has not been applied to expenses payable from that fund, reserving, for the present, only such amount as may be required for further expenses of this
1716 Board not yet ascertained.

Mr. Canda submitted to the Board the following communication, which had been addressed to him and which, upon his motion, was ordered to be spread upon the Minutes:

The Members of the North Side Association, having observed with much interest the proceedings taken under the act of the Legislature of this State passed June 18, 1875, for the construction and operation of steam railways in the city, and being desirous of expressing a sense of their obligation to those who have had the matter in charge, and

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to congratulate them and the people of New York upon the success which has resulted from their efforts; it is therefore

Resolved, That the thanks of this Association be tendered to the Mayor of this city, for his patriotic and judicious action in appointing Commissioners, to perform the important and onerous duties prescribed by the act, who commanded the public confidence; to the Commissioners who accepted the appointment, for the zeal and conspicuous ability with which they have performed their duties, as well as for the good influence they have exercised in harmonizing conflicting interests; and to the Corporators of the Manhattan Railway Company, who have united with commendable public spirit to deserve and command success, and whose character and high standing give a guarantee to the people that they will enjoy the advantages of Rapid Transit within the shorest practicable period in which the work can be done.

4718

A true copy.

Fordham Morris, Secretary North Side Association.

4719

New York, Nov. 20, 1875.

To Charles J. Canda, Esq., Secretary Rapid Transit Commission.

Upon motion of Mr. Canda, the following Report to the Mayor was signed by all the Commissioners and directed to be forwarded:

New York, December 11, 1875.

Hon. William H. Wickham, Mayor, etc.:

Sir—We, the undersigned, the Commissioners

4720 heretofore appointed by you, under, and to perform the duties intended by, the provisions of chapter 606, Laws of 1875, in making now our third and probably final Report, are gratified to be able to state that we have, so far as we are at present advised, completed the labors assigned to us.

The whole amount of the capital stock of the Manhattan Railway Company was subscribed within an hour after the Book for Subscriptions was opened on the 29th October last; and five per cent.
4721 of the par value of that amount was then paid to us in cash by the subscribers. That Company has since been organized by the election of a Board of Directors with a President and other officers.

The Gilbert Elevated Railway Company and the New York Elevated Railroad Company have executed and delivered bonds (each in $250,000) with sureties, for the faithful performance of the requirements and conditions imposed upon them by us, the terms of which requirements and conditions were explained in our Report to you dated September 6.

4722 We have every reason to expect that Rapid Transit will now be afforded to the city.

The minutes of our proceedings, the bonds and other contracts and agreements of the two companies last mentioned, the papers showing the organization of the Manhattan Railway Company, and other documents of value which have accumulated in our hands, will be disposed of in such manner as you may suggest.

With assurances of our appreciation of the fact that to your co-operation and advice we are largely indebted for whatever success has attended our own efforts, and repeating expressions of our

4723

thanks for your kind attention to and consideration for us personally,

We are, very respectfully, Your obedient servants, Joseph Seligman, Lewis B. Brown, C. H Delamater, Jordan L. Mott, C. J. Canda, Commissioners.

The minutes of this meeting as they appear above were read, and, upon motion of Mr. Mott, approved.

Upon motion of Mr. Canda, the Board adjourned subject to the call of the President or of any two of the Commissioners.

4724

Burton N. Harrison, Acting as Secretary (pages 977 to 1348 of Claimants' Exhibit "A").

APPLICATION FOR COMMISSIONERS TO DETERMINE THAT RAILWAY OF THE NEW YORK ELEVATED RAILROAD COMPANY OUGHT TO BE CONSTRUCTED.

To the Supreme Court of the State of New York, at the General Term thereof, in and for the First Judicial District:

4725

Your petitioner, the New York Elevated Railroad Company, a corporation duly created under and by virtue of the laws of the said State of New York and located in the city of New York, respectfully shows:

That under the terms and provisions of an Act of the Legislature of said State, entitled: "An Act further to provide for the Construction and Operation of a Steam Railway or Railways in Counties of the State," passed June 18, 1875, five commissioners were duly appointed by the Mayor of the city of New York; and said commissioners having by virtue of said act, full power and authority so

4726 to do, did duly determine upon the necessity of a steam railway in said city of New York; and did fix and determine the routes for such steam railway, and locate the same, and on the 2d day of September, 1875, the said commissioners did by resolution, a copy of which is contained in "Schedule One," hereto annexed, authorize your petitioner, the New York Elevated Railroad Company, to construct an elevated steam railroad, according to certain plans and specifications by them particularly described and enumerated, in order to con-

4727 nect your petitioner's railway, then in actual operation, with other steam railways and the depots thereof, and with steam ferries, over, across, through and along certain streets, avenues, places or lands in said city of New York, so located by them, and as are specifically set forth in the schedule hereto annexed, marked "One."

Your petitioners further show that the consent of the local authorities of the city of New York, having control of the portions of the streets and avenues upon which it is proposed to construct such railway, has been duly obtained for the con-

4728 struction thereof.

That application has been made to the owners of the property bounded on those portions of the streets and avenues aforesaid, upon which it is proposed to construct the railway of your petitioners, as is hereinbefore set forth, for their consent to the construction and operation thereof, through, along and over the routes so designated; and the consent of such owners to the extent of one-half in value of such property cannot be obtained, neither of the owners of property bounded on the whole line aforesaid, nor of such owners of the property bounded on any one of said streets,

and such consent was refused by the owners of more than one-half in value of the property bounded on each of said streets, and portions of streets, as appears by the proofs hereto annexed.

Your petitioners therefore pray for the appointment of three commissioners according to the requirements of the fourth section of said act, whose determination, given after a due hearing of all parties interested, and conferred by the Court, that such railway ought to be constructed, shall be taken in lieu of the consent of the said property owners, and that such commissioners report thereon with 4730 all convenient speed.

And your petitioners will ever pray, &c.

M. Courtright, President N. Y. Elevated Railroad Company.

E. C. Delevan, Attorney for Petitioners.

City and County of New York, ss.:

Milton Courtright, President of the said New York Elevated Railroad Company, being duly sworn, says, that he has read the foregoing petition, and knows the contents thereof; that the 4731 same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

M. Courtright.

Sworn to before me this 30th day of November, 1875.

Angelo Bertolino, Notary Public, N. Y. Co.

Attached to the said petition were the papers described in "Schedule One," being a copy of the

4732 resolutions on September 2, 1875, adopted by the Mayor's Commission, so called (see Index), and the affidavits, with schedules attached thereto, showing that owners of property situated along the proposed route representing $30,651,730 in a valuation of $49,265,280 of all property so situated, according to an assessment roll for the purpose of taxation in the year 1875, refused to consent to the construction of the said road through the streets on which their property was respectively situated (pages 391 to 394 of Claimants' Exhibit
4733 "A").

ORDERS OF GENERAL TERM OF THE SUPREME COURT APPOINTING COMMISSIONERS, DATED DECEMBER 1, 1875, AND JANUARY 14, 1876.

At a General Term of the Supreme Court of the State of New York, held in and for the First Department at the Court-House, in the city of New York, on the first day of December, 1875.

Present: Hon. Noah Davis, John R. Brady, Charles Daniels, Justices.

4734 In the Matter of The Petition of the New York Elevated Railroad Company.

On reading and filing the petition of the New York Elevated Railroad Company, and the affidavits of William Kellock, Oliver G. Gardner, Erastus H. Pease, Charles B. Kehoe, Robert Taylor, John Wilson, George A. Lacas, William E. Donnelly, and Frederick D. Pickman, with the Schedules thereto annexed, and on motion of James Emott, of counsel for said company, it is ordered:

That Oliver H. Palmer, John T. Agnew, and Edward Z. Laurence, of said city, be and are hereby

appointed Commissioners under and pursuant to Section 4 of Chap. 606 of the Laws of 1875, to determine whether the railway mentioned and described in said petition ought to be constructed and operated by said New York Elevated Railroad Company, over, through and along the streets and avenues specified in said petition, and designated in the resolution in that behalf adopted on the 2d of September, 1875, by the Commissioners, appointed pursuant to Sec. One of said Chap. 606 of the Laws of 1875.

And it is further ordered that said Commissioners do forthwith, after receiving notice of this order, appoint in writing a place within the city of New York, and a time not less than eight nor more than twelve days thereafter, when they will hear all parties interested in said matter. 4736

And it is further ordered that notice of the time and place of such hearing be given by publication of such appointment in at least six daily newspapers, to wit: The New York Times, The New York Herald, The Daily Tribune, The World, The Sun, and The Evening Post, published in said city, seven times consecutively, and by posting a copy of such notice in a conspicuous place in at least fifty places along said route. 4737

And it is further ordered that when the said Commissioners shall have made their determination upon the matter hereby referred to them they report the same to this Court and that the petitioners, by their attorney or counsel, may present the said report to the General Term of this Court for confirmation, upon any day when the same shall be in session, first giving notice of such intended presentment and application by publishing the same four times in the daily papers above

4738 named, and by serving at least eight days on all attorneys who shall have given written notice of appearance to James Emott, Esq.

And it is further ordered that the expenses and disbursements of said Commissioners, together with a suitable allowance for their services, to be adjusted and allowed by one of the Justices of this Court, be paid by the said petitioners.

Wm. Walsh, Clerk.

At a General Term of the Supreme Court of the
4739 State of New York, held in and for the First Judicial Department, at the Court House in the city of New York, on the 14th day of January, 1876.

Present: Hon. Noah Davis, P. J., Hon. John R. Brady, Hon. Charles Daniels, J. J.

In the Matter of The Petition of the New York Elevated Railroad Company.

An order having been made in this matter by this Court, on the 1st day of December, instant, upon the petition of the said Company, and the affidavits accompanying the same, by which order
4740 Oliver H. Palmer, Edward Z. Laurence and John T. Agnew were appointed Commissioners under and pursuant to Sec. 4 of Chap. 606 of the Laws of 1875, to perform certain duties specified in said order, and required by said act; and the said John T. Agnew having declined and refused to serve as one of such Commissioners,

Now, upon reading and filing the declination and refusal of said John T. Agnew, in writing, and on motion of James Emott, of counsel for petitioners, it is ordered that Everett P. Wheeler be

and he is hereby appointed Commissioner in place of said John T. Agnew, under said Sec. 4 of Chap. 606 of the Laws of 1875, together with Oliver H. Palmer and Edward Z. Laurence who are named in the order aforesaid, with all the powers and to perform the duties in said order specified.

And it is further ordered that the said Oliver H. Palmer, Edward Z. Laurence and Everett P. Wheeler proceed as such Commissioners, and all other parties concerned likewise do and proceed, as in and by said order directed, and as if the same had been made and entered of this date. 4742

Wm. Walsh, Clerk (pages 394 to 397 of Claimants' Exhibit "A").

REPORT OF COMMISSIONERS.

New York Supreme Court, County of New York.

In the Matter of The Petition of the New York Elevated Railroad Company.

To the Honorable the Supreme Court of the State of New York:

The undersigned, Commissioners appointed by your Honorable Court by an order made on the 4743 first day of December, 1875, as supplemented and modified by an order made on the fourteenth day of January, 1876, both orders being made upon the petition of the New York Elevated Railroad Company, and pursuant to Section 4 of Chapter 606 of the Laws of 1875, to determine whether the railway mentioned and described in said petition ought to be constructed and operated by said New York Elevated Railroad Company over, through and along the streets and avenues specified in said petition and designated in the Resolution in that behalf, adopted on the second day of September,

4744 1875, by the Commissioners appointed pursuant to Section one of said Chapter 606 of the Laws of 1875,

Respectfully report: That in pursuance of the said order, and of Section 4 of Chapter 606 of the Laws of 1875, referred to therein, your Commissioners did forthwith, after receiving notice of the said order, to wit, on the fifteenth day of January, 1876, appoint in writing a place within the city of New York, and a time not less than eight nor more than twelve days thereafter, when they would hear

4745 all parties interested in said matter, by then and there making and signing an announcement in writing, by which they designated the 26th day of January, 1876, at eleven o'clock in the forenoon, as the time when, and the City Hall, in the city of New York, as the place where, they would hear all parties interested in the matter.

That in further pursuance of said order of your Honorable Court, your Commissioners gave notice of the time and place by them appointed for such hearing, by publication of the notice above described in at least six daily newspapers, to wit, in

4746 the following seven daily newspapers: *The New York Times, The New York Herald, The Daily Tribune, The World, The Sun, The Evening Post* and *The Daily Register*, published in the said city, in seven consecutive numbers of each of the said newspapers; and also by posting a copy of such notice in a conspicuous place in at least fifty public places, to wit, in one hundred and fourteen public places along the said route of the proposed railroad, as by the copies of such notice and the several affidavits relating thereto, which are annexed to this report, will more fully appear.

That in further pursuance of said order your

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Commissioners, having duly taken the oath of office prescribed by the constitution of the State of New York, the official record of which is annexed to this report, did at the time and place designated in the aforesaid notice proceed to give a due hearing to all parties interested in the matter, and for that purpose did adjourn from day to day and from time to time, holding public sessions in the said City Hall upon each of the several days following, to wit, January 26th, 27th and 31st, February 14th, 15th, 16th, 17th, 19th and 21st, 1876, until a due hearing had been given to all parties desiring to be heard, whether in person or by counsel; that after the close of these public sessions your Commissioners proceeded in executive session to visit the route of the proposed road to examine the plans of the company for its construction, the objections submitted to them against its construction and operations, the affidavits and other representations and evidence offered in support of such objections, also to seek and consider all the information they could obtain bearing upon the question submitted to them, and the arguments of counsel and of parties interested, all of which have been carefully considered and accompany this report.

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And your commissioners further report that their unanimous determination upon the matters referred to them by the aforesaid order of your Honorable Court is as follows:

That such railroad, beginning at the intersection of Greenwich street and Battery Place, to, over and across Battery Place to the edge of the Battery and State street; thence over, through and along the edge of the Battery and State street to Whitehall street; thence over, through and along Whitehall street to and connecting with the South Ferry,

4750 Hamilton Avenue Ferry and Staten Island Ferry; and from the intersection of State street and Whitehall street over and across Whitehall street to Front street; thence over, through and along Front street to Coenties slip; thence over, through, along and across Coenties slip to the intersection of Coenties slip and Pearl street; thence over, through and along Pearl street to Hanover square; thence over, through and along Hanover square and Pearl street to John street; thence over, through and along John street and Burling slip
4751 to, over, along and across South street to and connecting with the Fulton Ferry, and from the intection of John street and Pearl street, crossing John street, over, through and along Pearl street and Franklin square to New Bowery; thence over, through and along New Bowery and Chatham square to the Bowery; thence over, through and along the Bowery to Third avenue; thence over, through and along Third avenue to East Thirty-fourth street; thence over, through and along East Thirty-fourth street to and connecting with the Thirty-fourth street Ferry; and from the inter-
4752 section of East Thirty-fourth street and Third avenue, crossing East Thirty-fourth street, over, through and along Third avenue to East Forty-second street; thente over, through and along East Forty-second street to and across Fourth avenue to and connecting with the depot known as the Grand Central, occupied by the New York Central and Hudson River Railroad Company, the New York and Harlem Railroad Company and the New York, New Haven and Hartford Railroad Company; and from the intersection of East Forty-second street and Third Avenue, and crossing East Forty-second street, over, through and along Third

avenue to East Ninety-second street, thence over, through and along East Ninety-second street, to, and connecting with the Astoria Ferry; and from the intersection of Third avenue and East Ninety-second Street, crossing East Ninety-second street, over, through and along Third avenue to East One hundred and twenty-ninth street (there connecting with the Ferries having landings at or near Harlem Bridge); thence over, through and along East One hundred and twenty-ninth street to the intersection of East One hundred and twenty-ninth street and the Harlem River; thence over and 4754
along the Harlem River to First avenue; thence over and across the Harlem River, connecting with the depot of the Port Chester branch of the New York, New Haven and Hartford Railroad; and from the intersection of Third avenue and East One hundred and twenty-ninth street, over and across Third avenue, and over, through and along East One hundred and twenty-ninth street to Lexington avenue; thence over, through and along Lexington avenue to River street and the Harlem River; thence over, through and along River street and the southerly shore of the Harlem River to, 4755
and connecting with, the railway of the New York and Harlem Railroad at Fourth avenue, with a branch and turnout from the intersection of New Bowery and Chatham square, over, through and along Chatham square to Chatham street; thence over, through and along Chatham street to Park row; thence over, through and along Park row to Tryon row (there to connect with the railway to be laid over the East River bridge for cars to be operated or propelled by steam); thence over, through and along, or in front of and around, Tryon row to the park; thence along the park,

4756 and over, through and along Centre street to Park street; thence over, through and along Park street to Mott street, crossing over Mott street; thence over and through the block to Doyer street, crossing over Doyer street; thence over and through the block to Pell street, crossing over Pell street; thence over, through and along Pell street, and intersecting the route hereinbefore fixed and determined over, through and along the Bowery and with a siding for a turnout, commencing at the intersection of Coenties slip and Water street;

4757 thence over, through and along Water street to Whitehall street; thence over, through and along Whitehall street to and intersecting the route hereinbefore fixed and determined at the intersection of Front street and Whitehall street;

Ought to be constructed and operated.

Subject, however, to the following conditions and restrictions:

First. That that part of the said railroad to be constructed over, through and along the Third avenue, shall be constructed with the superstructure over the center of the avenue, so located and ar-

4758 ranged as to conform to the requirements of the specifications of the Commissioners appointed under Chapter 606 of the laws of 1875, and that in all other streets and avenues the columns be located in the roadway, wherever such location is practicable under the aforesaid specifications, and where the alignment and other circumstances will properly admit of it.

Second, that in all streets forming any portion of said route when the width of the street between the curb-stones does not exceed thirty feet, the said railway shall not be constructed with a row

of columns on the line of each curb, and a superstructure carrying a single track upon each row of columns, but should be constructed and operated in one of the other methods designated by the Commissioners aforesaid appointed under Chapter 606 of the laws of 1875, without prejudice, however, to the right of said New York Elevated Railroad Company to construct said railway in any mode provided for in the specifications adopted by said Commissioners over and along such portions of said route in respect to which they shall first have had and obtained the consent in writing to such mode of construction from the owners of one-half in value of the property bounded on that portion of such route over and along which the petitioners shall desire to construct said railway in the manner lastly hereinbefore mentioned; and that the portion of such railway called a route of connection, beginning at the intersection of Ninth avenue and West Ninety-second street, over, through and along West Ninety-second street, to Eighth avenue, thence over, through and along Eighth avenue to River street and the Harlem River, thence over, through and along River street, and over and along the Harlem River, over and crossing the Harlem River, at or near the High Bridge, to and connecting with the New York, Boston and Montreal Railroad, or the depot thereof, and to and connecting with the Spuyten Duyvil and Port Morris Railroad, or the depot thereof, ought not to be constructed or operated as a whole; we do not, however, determine that no portion of such route ought not to be used for a steam railway.

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And your Commissioners further report that in their judgment the public benefits to be conferred

4762 upon the city of New York by the construction and operation of the proposed railroad upon the route first above specified are so great as far to outweigh any damage which is likely to be inflicted thereby upon the property adjoining the route; and that their decision upon the matter submitted to them has been determined by this consideration. The question whether the elevated railroad proposed is the only or best form of steam railroad for rapid transit in the city of New York, and the question whether the particular route selected and here-
4763 inbefore designated is the only or best route for such a railroad in this city to follow, being, in their judgment, questions which the order of your Honorable Court does not require or permit them to determine.

New York, March 4th, 1876.

O. H. Palmer, E. Z. Laurence, Everett P. Wheeler, Commissioners (pp. 398 to 405 of Claimants' Exhibit "A").

ORDER OF GENERAL TERM OF THE SUPREME COURT APPROVING REPORT OF COMMISSIONERS, DATED APRIL 15, 1876.

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At the General Term of the Supreme Court, for the First Department, held at the Court House in the City and County of New York on the 15th day of April, 1876.

Present: Hon. Noah Davis, P. J., Hon. John R. Brady, Hon. Charles Daniels, J. J.

In the Matter of The Petition of the New York Elevated Railroad Company.

On reading and filing the report of Oliver H. Palmer, Edward Z. Laurence and Everett P. Wheeler,

Commissioners appointed under orders of this Court, made on the first day of December and on the 14th day of January last, to determine whether the railroad described in said petition ought to be constructed and operated by the said New York Elevated Railroad Company, through, over and along the routes set forth in said petition; and on reading and filing notice of an application to this Court to confirm said report, together with proofs of publication and service of such notice as required by the aforesaid orders, and on hearing James Emott and Henry E. Davies, of counsel for 4766
the said New York Elevated Railroad Company, and Samuel G. Jelliffe, of counsel for James M. Hartshorne, in respect to property along Ninety-second street, for the confirmation of said report, and John E. Parsons, of counsel for property holders along the Third avenue, in said city, and Wheeler H. Peckham, of counsel for property holders along the Bowery, and Joseph H. Choate, of counsel for property holders along Pearl street, in opposition thereto, and due deliberation having been had,

Ordered, that the said Report be, and the same 4767
hereby is, in all respects confirmed.

Wm. Walsh, Clerk.

(Endorsed): Filed April 15, 1876 (pp. 406 and 407 of Claimants' Exhibit "A").

APPROVAL BY THE COMMISSIONERS OF THE LOCATION, PLANS, STRUCTURES, STATIONS, ETC., OF AND UPON SO MUCH OF THE NEW YORK ELEVATED ROAD AS LIES ON WHAT IS DESIGNATED AS THE "EAST SIDE," ETC., DECEMBER 30, 1879.

Whereas, by a certain resolution of the New

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York Elevated Railroad Company, dated December 5th, 1878, a copy whereof is hereto annexed, the undersigned commissioners were requested to inspect and approve the location, stations, structures, plans, etc., of the said road as in said resolution set forth, and

Whereas, in and by another resolution of said company, dated April 12th, 1879, a copy of which is hereto annexed, it was

Resolved, that such inspection and approval be
1769 limited to and cover so much of the road or route of said company as lay on what is designated as the "east side," as in said resolution of April 12th set forth, and to which reference is hereby made, and

Whereas, we, the undersigned commissioners, have duly inspected and examined so much, and such parts or portions of the Elevated Railroad of said company, including the tracks, turn-outs, switches, crossings, curves, intersections, branches, connections, extensions, sidings, platforms, stations, stairways, approaches, structures, rolling
1770 stock, motive power and its application, position, grade, elevation and depression of the tracks and the mode of securing and strengthening the road, crossings and stations, and turn-outs as are located, constructed or being constructed, or operated, within the limits or boundaries, designated in said last mentioned resolution,

Now, therefore, we, the undersigned commissioners, appointed and acting under the provisions of chapter 489 of the laws of 1867, and chapter 595 of the laws of 1875, and pursuant to such powers as are vested in or conferred upon us under the provisions of chapter 606 of the laws of 1875, sav-

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ing and reserving to ourselves full right and authority hereafter to recommend or approve such alterations, changes and improvements in the said railroad structures, motive power, property and "plant" as practical operation and experience may suggest, and progress in science and engineering may indicate and develop; and reserving also our right to condemn and disapprove or order removed any part of said railroad structures, erections, fixtures, engines, cars, property or "plant" which may prove hereafter either inherently, or in its management unsafe or dangerous, do hereby conclude, de- 4772
termine and decide as follows:

First.—We approve of the New York Elevated Railroad, the tracks, columns and positions thereof, turnouts, switches, crossings, curves, intersections, connections, extensions, sidings, stations, platforms, stairways, approaches, structures (except as hereinafter mentioned), rolling stock, motive power and its application, position, grade, elevation and depression of the tracks, and the mode of securing and strengthening the road crossings, stations and turn-outs, commencing at and from the intersection of Greenwich street and Battery 4773
Place, over Battery Place and the Battery as approved by the Park Commissioners, to South Hamilton avenue and Staten Island ferries; thence through Whitehall street to its intersection with Front street, over and through Front street, Coenties slip, Pearl street, Hanover and Franklin squares, New Bowery, Chatham square, Bowery, and thence on Third avenue to One Hundred and Twenty-ninth street, as shown by and upon maps dated and approved, respectively, December 30th, 1879.

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Second.—We approve of the branch tracks or roads erected and constructed through and over the New Bowery to Chatham square, through Chatham square, Chatham street and Park Row, to Tryon Row, known as the "Chatham street branch"; also of the branch road, running on Forty-second street from its intersection at Third avenue with the main line of said railroad to the Grand Central Depot, and we also approve of the branch road (thirty-fourth street branch), and tracks constructed and extending over, through and upon Thirty-fourth

4775 street from its intersection at Third avenue with the main line of said railroad, to the Thirty-fourth street Ferry, at the East River—together with all stations, columns, crossings, switches, turn-outs, appurtenances, appliances or other structures upon or connected therewith, or appertaining to said branches and each of them as are shown by and upon maps dated and approved respectively December 13th, 1879, furnished and submitted to us by the said company showing among other things the location of the route of the road and its branches, the street or streets, place or avenue

4776 through, upon or over which the same run or are constructed or being constructed, the stations, crossings, intersections, tracks, turn-outs, switches, curves, and branch roads approved as aforesaid.

All of which is respectfully submitted.

Dated, New York, December 30th, 1879.

F. J. Fithian, J. S. Freer, James Matthews, Commissioners (pages 409 to 412 of Claimants' Exhibit "A").

Resolution adopted September 7, 1875, by the Common Council of the City of New York.

On September 7, 1875, the Common Council duly

adopted and the Mayor duly approved the following resolution:

Resolved, That this Board on behalf of the Corporate authorities of the City of New York, hereby gives its consent to the routes adopted by the Commission on Rapid Transit, as contained in the report of said Commission transmitted to the Board today (page 408 of Claimants' Exhibit "A").

LEASE, NEW YORK ELEVATED RAILROAD COMPANY WITH MANHATTAN RAILWAY COMPANY, DATED AUGUST 1, 1884. 4778

This Indenture, made this first day of August, one thousand eight hundred and eighty-four, between The New York Elevated Railroad Company, hereinafter called the New York Company, and the Manhattan Railway Company, hereinafter called the Manhattan Company; Witnesseth that

Whereas a lease, bearing date the 20th day of May, 1879, was heretofore made by the said New York Company to the said Manhattan Company of the railways and other property of the New York Company, for the term of nine hundred and ninety-nine (999) years, on certain conditions, as by the said lease, to which reference, for greater certainty and particularity, is to be had, will appear, and 4779

Whereas, by an agreement made between the said two companies, bearing date the 6th day of May, one thousand eight hundred and eighty-four, the said lease was declared forfeited and possession of the said railways and other property was retaken by the New York Company, as by the said agreement, to which for greater certainty and particularity reference is to be had, will appear, and

4780 *Claimants' Exhibits.*

Whereas, it has been agreed between the said two companies that a new lease should be made by the New York Company to the Manhattan Company of the railways and other property of the New York Company as hereinafter more particularly described, on the conditions hereinafter mentioned,

Now, then, in consideration of the premises and of the rents and covenants hereinafter mentioned, the New York Company doth hereby grant, demise and lease unto the Manhattan Company all and
4781 singular the railways and other property now owned, used or possessed by the said New York Company in the City of New York, being all and singular the entire property and estate of the said New York Company, excepting such of its franchises, rights and privileges as are or may be necessary to preserve its corporate existence or organization and its interest in the covenants and conditions of this indenture,

To have and to hold the said railways, premises and appurtenances unto the said Manhattan Com-
4782 pany and its successors for the term of nine hundred and ninety-nine years from the date of organization of the said Manhattan Company, to wit, November first, one thousand eight hundred and seventy-five, or so long as it shall continue to exist as a corporation and be capable of exercising all the functions herein stipulated on its behalf, the Manhattan Company yielding and paying unto the New York Company, its successors and assigns, the yearly rent of Ten thousand dollars, payable semi-annually, on the first days of January and July during the said term, and keeping and performing all and singular the covenants and agree-

ments hereinafter mentioned to be by the said Manhattan Company kept and performed.

Article First: The Manhattan Company hereby assumes, and covenants and agrees to pay, as the same respectively become due, the principal and interest of the first mortgage bonds of the New York Company and keep it safe and harmless at all times from all claims and demands against it arising from or under the said bonds or any of them.

Article Second: The Manhattan Company further agrees to pay to the said New York Company as further rent Three hundred and ninety thousand dollars ($390,000) yearly, that is to say, the Manhattan Company will each and every year during the term hereby granted, beginning with the first day of July, 1884, pay to the New York Company Three hundred and ninety thousand dollars ($390,000) free of all taxes, in equal quarter-yearly payments of Ninety-seven thousand five hundred dollars ($97,500) on the first days of October, January, April and July, the first of such payments to be made on the first day of October, one thousand eight hundred and eighty-four. 4784 4785

Article Third: The Manhattan Company shall at its own proper cost, from time to time, and whenever necessary for the use of the New York Company, make out and furnish to the New York Company any and all reports and statements which the latter shall or may hereafter be by law required to make or file.

Article Fourth: The Manhattan Company shall at its own proper cost and expense, operate and run the demised railways during the said term in

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the same manner as the New York Company is now or shall at any time hereafter be required or authorized by law to do; and shall and will maintain, preserve and keep the railways and premises hereby demised and every part thereof in thorough repair, working order and condition, and supplied with rolling stock and equipments, so that the business of the said demised railways shall be preserved, encouraged and developed, the business thereof be done with safety and expedition, the public be accommodated in respect thereto with

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all practicable conveniences and facilities, and the future growth of such business as the same may arise or be reasonably anticipated, be fully provided for and secured.

Article Fifth: In addition to the rentals hereinbefore provided, the Manhattan Company shall also pay and discharge as the same may become due any and all taxes, assessments, duties, imposts, dues and charges whatsoever, which shall become payable by or be levied, assessed or imposed during the said term by any lawful authority upon the New York Company, or upon the demised rail-

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ways, premises, or any part thereof, or the business earnings or income of the same.

Article Sixth: Possession of the demised railway and premises shall be given by the New York Company to the Manhattan Company forthwith; and upon delivery of such possession, the New York Company shall transfer and deliver to the Manhattan Company, for use upon the said demised railways and premises, all machinery, tools, implements, furniture, fuel, material or other railroad supplies belonging to the New York Company, which shall have been procured for the use

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of the said railways; and the Manhattan Company shall and will, at the end of the term aforesaid or other sooner termination of this lease, transfer and deliver in return to the New York Company all such machinery, tools, implements, fuel, materials and other railway supplies as may have been procured for the use of said railways or any of them as shall then remain on hand, and which shall be at least equal in quantity and value to those received by it from the New York Company hereunder.

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Article Seventh: The Manhattan Company shall and will at all times during the term aforesaid hold, save, and keep harmless and indemnify the New York Company from and against all expenses of operating the demised railways and premises and from all damage, liabilities, actions, causes of actions, suits, claims and demands for injuries to persons or property, or for causing the death of any person or for any other thing in the operation or management of the demised property, or for any breach of contract or wrong done or suffered by the Manhattan Company, in the carrying on of the business pertaining thereto; and shall 4791 and will defend all suits and claims brought against the New York Company in respect to any matter or thing arising out of the management or operation of the said railways since the thirty-first day of January, eighteen hundred and seventy-nine.

Article Eighth: In case the Manhattan Company or its successors shall at any time during said term fail or omit to pay in full the cash rentals hereinbefore mentioned, as the same shall become payable, or fail or omit to keep and perform the

4792 covenants and agreements herein contained, or any of them, and continue in default in respect to the performance of such covenants or agreements or payments for the period of ninety days, then and in either and every such case it shall be lawful for the New York Company, its successors or assigns, at its or their own option, to enter upon the railways and premises hereinbefore demised, and any and every part thereof, and to remove all persons therefrom; and from thenceforth the said demised railways and premises with the equipments and
4793 appurtenances thereof, and all additions and improvements which shall have or may have been made to the same, to have, hold, possess and enjoy as of the first or former estate of the said New York Company, and upon such entry for non-payment of cash rentals, or breach or non-performance of any covenant or agreement herein contained, all the estate, right, title, interest, property, possession, claim and demand whatsoever of the Manhattan Company or its successors in or about the said demised railway and premises, or either or any part of either thereof, shall wholly
4794 and absolutely cease, determine and become void, anything hereinbefore contained to the contrary in any wise notwithstanding; but no re-entry shall waive or prejudice any claim or right of the New York Company to or for damages against the Manhattan Company on account of such non-payment or non-performance or breach, and all such claims and rights are hereby expressly reserved to the New York Company.

Article Ninth: The New York Company hereby covenants and agrees that it shall and will at any time when requested by the Manhattan Com-

pany, or its successors, execute, acknowledge and deliver to the Manhattan Company or its successors, at their proper cost and expense, any and all such other or further instruments and assurances in the law, for the better granting, demising and leasing of said railways and premises to the Manhattan Company and its successors, upon and subject to all and singular the rents, covenants, agreements and conditions hereinbefore reserved and mentioned, as by the Manhattan Company or its successors, or by its or their counsel learned in the law shall reasonably be advised, devised or 4796
required; and the Manhattan Company covenants, promises and agrees to and with the New York Company, its successors and assigns, that it and its successors shall and will, whenever thereunto requested by the New York Company, its successors or assigns, execute, acknowledge and deliver any and all instruments for the more effectual assuring unto the New York Company, its successors or assigns, the payment of the cash rentals hereinbefore reserved or agreed to be paid, and the performance of the promises and agreements hereinbefore set forth on the part and behalf of the Manhattan 4797
Company to be performed as by the New York Company, its successors and assigns, or by its or their counsel learned in the law, shall be reasonably advised, devised or required.

Article Tenth: This lease, the agreements herein contained, the term, property and franchises herein granted and demised, shall not, nor shall any or any part of the same be released, transferred, sublet, assigned or incumbered except with the written assent of the New York Company thereto first had and obtained; but nothing in this

4798 article contained shall extend to the case of a disposition by the Manhattan Company of any equipment or supplies replaced by it with other equivalent property, or to the case of a continuance or renewal of the corporate existence of the Manhattan Company, which continuance or renewal for the whole of said term hereby granted, the Manhattan Company agrees to procure before the expiration of the term of its existence now fixed in its Articles of Association.

4799 Article Eleventh: The Manhattan Company agrees that it will establish and maintain a sinking fund for the payment of the said first mortgage bonds and for that purpose will on or before the first day of January, eighteen hundred and ninety, and on or before each first day of January thereafter, during the currency of any of the said bonds, pay to the trustees of the said mortgage a sum equal to one per centum of the largest aggregate amount of the principal of said bonds which shall have been outstanding at any time preceding such payment, which sum with the interest accrued thereon shall be applied by such trustees to the 4800 purchase in open market, within ninety days after receipt thereof, of so many of the said bonds with their unmatured coupons as the trustees shall be able to acquire at the market price thereof, but not exceeding the rate of Twelve hundred dollars for each such bond with its coupons, which bond and coupons shall thereupon be cancelled by the trustees and delivered to the New York Company, so to remain; and in case and to the extent that such purchases cannot be so made, then the trustees shall notify the New York Company thereof and any sums so remaining, with all accumulations

thereof, shall be invested and reinvested from time to time by the trustees in such first class railway securities or other sufficient securities as shall from time to time be designated by the New York Company and approved by the trustees, all which investments and reinvestments shall be made in the name of, and be held by the trustees until the said bonds mature and thereupon the trustees shall apply the fund toward the payment of the bonds then outstanding. And as to all bonds not extinguished under the operations of the said sinking fund, it shall be at the option of the Manhat- 4802
tan Company, by written notice duly served upon the New York Company at any time within six and not less than three months before the maturity of the present bonds, to require the New York Company to renew or extend the time of payment of the whole or any part thereof, by agreement with the holders, and do all acts and things and execute and deliver all instruments or writings requisite for such extension or renewal or to execute and deliver to the present or any other trustee, agreed upon by the parties, its mortgage upon all its then property, securing its bonds to be issued there- 4803
under to an amount equal to the amount of its present bonds then outstanding and not provided for by said sinking fund and the said new bonds to issue and deliver to the trustees, to be sold or disposed of according to the direction of the Manhattan Company, and the funds thus realized shall be applied to the payment and retirement of all said outstanding and unprovided for first mortgage bonds of the present issue. Said mortgage shall contain a sinking fund clause substantially like that herein and shall be substantially in the terms of the present mortgage and the bonds secured

4804 thereby shall be similar in terms to the present bonds of the New York Company, and shall be due at such time or times and with such rate of interest as may be directed by the Manhattan Company; and payment of principal and interest on all of said bonds shall be assumed by and chargeable upon the Manhattan Company, in all respects as is herein provided as to the present outstanding bonds.

Article Twelfth: For the better carrying into
4805 effect the provisions of this instrument, the New York Company hereby constitutes the Manhattan Company its agent and attorney, to do in its name any and all things necessary to be done for the complete execution of this indenture.

In Witness Whereof, the said two companies have caused this indenture to be subscribed with their names by the Presidents or Vice-Presidents and Secretaries of the said Companies, and the corporate seals of the said companies to be hereto affixed, the day and year first above written.

The New York Elevated Railroad Company, by
4806 Fred F. Thompson, President. (Seal)

Attest: J. A. Cowing, Secty.

Manhattan Railway Company, by Jay Gould, President. (Seal)

Attest: D. W. McWilliams, Secretary.

State of New York, City and County of New York, ss.:

On this 1st day of August in the year of our Lord one thousand eight hundred and eighty-four before me personally came Daniel W. McWilliams, Secre-

tary of the Manhattan Railway Company, with whom I am personally acquainted, who being by me duly sworn said that he resided in the City of Brooklyn, Kings County, New York, that he was the Secretary of the Manhattan Railway Company, that he knew the corporate seal of the said Company, that the seal affixed to the foregoing instrument was such corporate seal, that it was so affixed by order of the Board of Directors of said Company, and that he signed his name thereto by the like order as Secretary of the said Company.

4808 And the said Daniel W. McWilliams further said that he was acquainted with Jay Gould and knew him to be the President of the said Company, that the signature of the said Jay Gould, subscribed to the said instrument, was in the genuine handwriting of the said Jay Gould and was thereto subscribed by the like order of the said Board of Directors and in presence of him the said Daniel W. McWilliams.

William Molloy, Notary Public, Kings County, N. Y. (Certificate filed in N. Y. Co.)

4809 State of New York, City and County of New York, ss.:

On this 2nd day of August in the year of our Lord one thousand eight hundred and eighty-four before me personally came James A. Cowing, Secretary of the New York Elevated Railroad Company, with whom I am personally acquainted, who being by me duly sworn said that he resided in the City of Brooklyn, that he was the Secretary of the New York Elevated Railroad Company, that he knew the corporate seal of the said Company, that the seal affixed to the foregoing instrument was such corporate seal, that it was affixed by

order of the Board of Directors of said Company, and that he signed his name thereto by the like order as Secretary of the said Company.

And the said James A. Cowing further said that he was acquainted with Frederick F. Thompson and knew him to be the President of the said Company, that the signature of the said Frederick F. Thompson subscribed to the said instrument was in the genuine handwriting of the said Frederick F. Thompson, and was thereto subscribed by the like order of the said Board of Directors and in the presence of him, the said James A. Cowing.

William Molloy, Notary Public, Kings County, N. Y. (Certificate filed in N. Y. Co.)

Recorded in the office of the Register of the County of New York in Conveyances, Section 1, Liber 4, page 479; Section 2, Liber 6, page 169; Section 3, Liber 6, page 141; Section 4, Liber 5, page 224; Section 5, Liber 5, page 287; Section 6, Liber 4, page 356, all on June 20, 1891.

The foregoing lease is the basis of merger of the two companies. (For Certificate of Merger, see page 118.) (Pages 348 to 359 of Claimants' Exhibit "A.")

CERTIFICATE OF MANHATTAN RAILWAY COMPANY AS TO SURRENDER OF STOCK OF THE NEW YORK ELEVATED RAIL ROAD COMPANY.

The Manhattan Railway Company, a railroad corporation created by the laws of the State of New York, hereby certifies that being the lessee of the road of the New York Elevated Rail Road Company, also a railroad corporation created by the laws of the State of New York, it took the surrender or transfer of the capital stock of the stockholders of said New York Elevated Rail Road Com-

pany and issued in exchange therefor its own capital stock at the rate of one hundred and twenty shares of its own capital stock for every one hundred shares of the capital stock of said New York Elevated Rail Road Company pursuant to an agreement therefor between the said two corporations dated the 1st day of August, 1884, and in accordance with the provisions of Chapter 254 of the Laws of 1867 of the State of New York, and that the whole of the said capital stock of said New York Elevated Rail Road Company, being Sixty-five thousand (65,000) shares, has been so surrendered or transferred; and that pursuant to said Statute said Manhattan Railway Company makes this certificate. 4814

In Witness Whereof the said Manhattan Railway Company has caused its common seal to be hereto affixed and the same to be subscribed by its Secretary this twenty-fifth day of January, one thousand eight hundred and ninety.

Manhattan Railway Company, By Daniel W. McWilliams, Secretary.

(Seal.) 4815

City and County of New York, ss.:

Be It Remembered, that on this twenty-fifth day of January, 1890, before me came Daniel W. McWilliams, to me personally known and known to me to be the individual described in and who executed the foregoing certificate as Secretary of the Manhattan Railway Company, who, being by me duly sworn, did depose and say that he resides at No. 39 South Portland Avenue, Brooklyn, N. Y., and is the Secretary of said Company, and that he knows its common seal, and that the seal affixed

4816 to the foregoing certificate is the common seal of said Company and was so affixed by authority of the Board of Directors of said Company, and that he signed the same as such Secretary by like authority and on behalf of said Company acknowledged the execution thereof.

James Clyne, Notary Public, Kings County. Cert. filed in N. Y. Co.

(Seal)

4817 State of New York, City and County of New York, ss.:

Daniel W. McWilliams, being duly sworn, deposes and says that he is Secretary of Manhattan Railway Company, which has its office at No. 13 Park Row, New York City; that the annexed copy of the certificate of the surrender of capital stock of the New York Elevated Railroad Company to Manhattan Railway Company, dated January 25th, 1890, is a true copy of the original thereof on file in the office of the Secretary of State, and of the whole of said original.

Danl. W. McWilliams.

4818 Sworn to before me this 30th day of August, 1907.

J. Tufton Mason, Commissioner of Deeds, New York City.

Office of the Secretary of State of New York. Filed and recorded February 3rd, 1890 (pp. 118 to 120 of Claimants' Exhibit "A").

INTERBOROUGH RAPID TRANSIT COMPANY. CERTIFICATE OF INCORPORATION.

State of New York, County of New York, ss.:

We the undersigned, all of whom are of full

age and at least two-thirds of whom are citizens of the United States, and more than one of whom are residents of this State, desiring to become a corporation under and in pursuance of Chapter 565 of the Laws of 1890, known as the Railroad Law, and the acts amendatory thereof and supplemental thereto, and pursuant to the provisions of Chapter 544 of the Laws of 1902, being an act entitled "An Act to Amend Chapter Four of the Laws of eighteen hundred and ninety-one, entitled 'An Act to provide for rapid transit railways in cities of over one million inhabitants,'" for the 4820
purpose of undertaking the construction and operation (including the equipment thereof), of the railway hereinafter described, and for the purpose of maintaining and operating a railroad already built not owned by a railroad corporation, viz.: the railway already constructed or in process of construction under the contract made between the City of New York (acting by its Board of Rapid Transit Railroad Commissioners) and John B. McDonald, dated February 21, 1900, pursuant to the provisions of the said chapter four of the laws of eighteen hundred and ninety-one 4821
and amendments thereof, and the agreements amendatory to said contract, do hereby certify:

First: The name of the corporation shall be Interborough Rapid Transit Company.

Second: The duration of said corporation is to be perpetual.

Third: The kind of road to be built and operated is a rapid transit railway or railways for the conveyance and transportation of persons and property.

4822

Fourth: The length and termini of the said roads are as follows:

One route or line is about fourteen miles in length. Its termini are (1) a point at or near the intersection of Broadway with Park Row in the Borough of Manhattan, City of New York, and (2) a point at or near the present Kingsbridge Station of the New York and Putnam Railroad in the Borough of the Bronx, City of New York. The said route or line is to be constructed under and over the following-described route, viz.: Com-

4823

mencing at a point at or near the intersection of Broadway with Park Row in the said Borough of Manhattan, City of New York, thence under Park Row and Centre Street to a point at or near its intersection with New Elm Street, as proposed; thence under New Elm Street, as proposed to Lafayette Place; thence under Lafayette Place to Eighth Street; thence across and under Eighth Street and thence under private property lying between Eighth and Ninth Streets and east of the westerly side or line of Lafayette Place, produced, to Fourth Avenue; thence under Fourth Avenue

4824

and Park Avenue to Forty-second Street; thence turning from Park Avenue into Forty-second Street, and taking for the purposes of the curve if necessary or convenient private property at the southwest corner of Park Avenue and Forty-second Street; thence under Forty-second Street to Broadway; thence under Broadway to Fifty-ninth Street; thence under the Boulevard to a point at or near One Hundred and Twenty-fourth Street; thence by a viaduct along and over the Boulevard to a point at or near One Hundred and Thirty-fourth Street; thence under the Boulevard

4825

and Eleventh Avenue to a point on the centre line of Eleventh Avenue, produced, one thousand one hundred and five feet north of the centre line of One Hundred and Ninetieth Street, running thence under and over Eleventh Avenue and private property to Naegle Avenue; thence along and over Naegle Avenue to Amsterdam Avenue; thence along and over Amsterdam Avenue to a point at or near its intersection with Kingsbridge Avenue or Broadway and south of Riverdale Avenue; thence over Kingsbridge Avenue to Riverdale Avenue, and thence easterly over Riverdale Ave- 4826
nue to a point within five hundred feet of the present Kingsbridge station of the New York and Putnam Railroad Company; including a loop at the City Hall Park which shall connect with the portion of the route aforesaid along Centre Street at or near the south end of that street, and thence proceed westerly and southerly under City Hall Park and Broadway, and thence easterly to again connect with the portion of the route aforesaid in Park Row. This route shall also include suitable tracks and connections from the City Hall loop to the Post Office, such tracks and connec- 4827
tions being under the City Hall Park and under the portion of Park Row between the south end of Centre Street and Ann Street. This route shall also include suitable tracks and connections from the portion of the route near the corner of Park Avenue and Forty-second Street to the yard and tracks of the Grand Central Station. All of the tracks and connections last mentioned shall be under Park Avenue and Forty-second Street, and private property to be acquired.

The other route or line is about seven miles in length. Its termini are (1) a point or connection

4828 with the first above-described route on the Boulevard (or Broadway), in the Borough of Manhattan, City of New York, at or near its intersection with One Hundred and Third Street, and (2) a point at or near the intersection of Boston Road with Bronx Park in the Borough of the Bronx, City of New York.

The said route or line is to be constructed under and over the following-described route, viz.: Beginning at a point of intersection with the first above-described line on the Boulevard or Broad-
4829 way, in the Borough of Manhattan, City of New York, between One Hundred and Third and One Hundred and Fourth Streets; thence under private property to a point in One Hundred and Fourth Street; thence under One Hundred and Fourth Street to and across Central Park West; thence under Central Park to the intersection of Lenox Avenue and One Hundred and Tenth Street; thence under Lenox Avenue to a point near One Hundred and Forty-second Street; thence curving to the east and passing under private property, One Hundred and Forty-third and One Hundred and
4830 Forty-fourth Streets to the Harlem River at or near the foot of One Hundred and Forty-fifth Street; thence under the Harlem River and private property to East One Hundred and Forty-ninth Street at or near its intersection with Third Avenue; thence with a curve to the left and under Third Avenue to a point near its intersection with Westchester Avenue; thence with a curve to the right to and under Westchester Avenue, and thence by viaduct over and along Westchester Avenue to the Southern Boulevard; thence over and along the Southern Boulevard to the Boston

4831

Road, and thence over and along the Boston Road to Bronx Park.

Also with a branch or spur extending from One Hundred and Forty-second Street under Lenox Avenue to One Hundred and Fiftieth Street.

The said above-described railroad being the railroad constructed and in process of construction at the expense of the City of New York under contract made by and between said City of New York (acting by the Board of Rapid Transit Railroad Commissioners for the said City) and John B. McDonald, dated February 21, 1900, and the agreements amendatory thereof.

4832

Fifth: The said corporation shall also have power to enter into and fully perform any contract for the construction and operation of any other rapid transit railway authorized or which may be authorized to be constructed pursuant to the provisions of chapter Four of the Laws of Eighteen Hundred and Ninety-one, and its amendments and supplements.

Sixth: The name of each county in which any part of its railroads are to be located are the counties of New York, Westchester, Richmond, Kings and Queens.

4833

Seventh: The amount of the capital stock shall be Twenty-five Million Dollars ($25,000,000).

Eighth: The number of shares into which the capital stock is to be divided is two hundred and fifty thousand (250,000) and the par value of each share is One Hundred Dollars ($100). All of the said stock is to be common stock.

Ninth: The names and post-office addresses of the directors of the corporation who shall manage its affairs for the first year are as follows:

4834 *Claimants' Exhibits.*

Names	Post-Office Addresses.
Wm. H. Baldwin, Jr.	New York City.
Charles T. Barney	" "
August Belmont	" "
E. P. Bryan	Yonkers, N. Y.
Andrew Freedman	New York City.
James Jourdan	" "
Gardiner M. Lane	Boston, Mass.
John B. McDonald	New York City.
Walter G. Oakman	" "
John Pierce	" "
William A. Read	" "
Cornelius Vanderbilt	" "
George W. Young	" "

4835

Tenth: As soon as practicable the directors shall divide themselves into classes of which the first class shall consist of five directors, each of whom shall hold office for one year, or until the first annual election; the second class shall consist of four other directors, each of whom shall hold office for two years, or until the second annual election; the third class shall consist of four other directors, each of whom shall hold office for three years, or until the third annual election; and at each annual election the successors to the class of directors whose terms shall expire in that year shall be elected to hold office for the term of three years, so that the terms of one class of directors shall expire in each year. The board of directors may make by-laws to carry out this provision, which by-laws shall bind the members of the corporation.

4836

Eleventh: The place where the principal office of the corporation is to be located is the Borough of Manhattan, City of New York.

Twelfth: The corporation shall have power to

purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and to issue in exchange therefor its own stocks, bonds or other obligations.

Thirteenth: The board of directors, by an affirmative vote of a majority of the whole board may annually appoint an executive committee composed of seven of the directors, who shall continue as such committee for one year, and until their successors are appointed. The said executive committee shall have and may exercise any and all 4838 of the powers of the board of directors, except when the board is in session. Vacancies in said committee shall be filled by the board. A majority of said committee shall constitute a quorum for the transaction of business.

Fourteenth: The name and post-office address of each subscriber to this certificate and the number of shares of stock in the corporation which he agrees to take are as follows:

4839

Name.	Post-Office Address.	Number of Shares.
William H. Baldwin, Jr.,	New York City	10
Charles T. Barney	" "	10
August Belmont	" "	10
E. P. Bryan	Yonkers, N. Y.	10
Andrew Freedman	New York City	10
James Jourdan	" "	10
Gardiner M. Lane	Boston, Mass.	10
John B. McDonald	New York City	10
DeLancey Nicoll	" "	10
Walter G. Oakman	" "	10
John Peirce	" "	10
Wm. A. Read	" "	10
Cornelius Vanderbilt	" "	10
George W. Wickersham	" "	10
George W. Young	" "	10

4840

In Witness Whereof, we have executed and acknowledged this certificate in duplicate, and have hereunto subscribed our names at the City of New York this 25th day of April, one thousand nine hundred and two.

Wm. H. Baldwin, Jr.,
Gardiner M. Lane,
James Jourdan,
C. T. Barney,
Andrew Freedman,
August Belmont,
4841 John Peirce,
E. P. Bryan,
John B. McDonald,
Walter G. Oakman,
G. W. Young,
W. A. Read,
Cornelius Vanderbilt,
DeLancey Nicoll,
Geo. W. Wickersham.

State of New York, County of New York, ss.:

4842 On the 25th day of April, 1902, before me personally appeared August Belmont, DeLancey Nicoll, Walter G. Oakman, William A. Read, George W. Wickersham, George W. Young and E. P. Bryan; and on the 28th day of April, in the year last aforesaid, also before me personally came John Peirce, John B. McDonald, Andrew Freedman, Cornelius Vanderbilt, Charles T. Barney and James Jourdan; and on this fifth day of May, in the year last aforesaid, also before me personally came William H. Baldwin, Jr., each to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, and each of whom to me severally acknowledged that he executed the same.

4843

In Witness Whereof, I have hereunto set my hand and affixed my official seal at the City of New York the day and year last above written.

A. W. Andrews, Notary Public (36), N. Y. County.

(Seal)

State of New York, County of New York, ss.:

August Belmont, Walter G. Oakman and E. P. Bryan, being severally duly sworn, each for himself, deposes and says that he is a director named 4844
in the foregoing certificate of incorporation; that at least one thousand dollars of capital stock for every mile of road built or proposed to be built has been subscribed thereto, and has been paid in good faith and in cash to the directors named in the certificate, and that it is intended in good faith to build, maintain and operate the roads mentioned therein.

August Belmont,
Walter G. Oakman,
E. P. Bryan.

Severally subscribed and sworn to before me 4845
this 25th day of April, 1902.

A. W. Andrews, Notary Public (36), N. Y. County.

(Seal)

Endorsement: Certificate of Incorporation of Interborough Rapid Transit Company.

Tax for privilege of organization of this corporation, $12,500 00/100, under Chapter 448, Laws of 1901, paid to State Treasurer before filing.

4846

State of New York, Office of Secretary of State, Filed and recorded May 6, 1902. J. B. H. Mongan, Deputy Secretary of State.

This is to Certify that pursuant to the authority upon it conferred by chapter 4 of the Laws of eighteen hundred and ninety-one, as amended by chapter 544 of the laws of nineteen hundred and two, the Board of Rapid Transit Railroad Commissioners, appointed in and for the City of New
4847 York, has by a resolution duly adopted at a meeting held on the first day of May, 1902, approved, and does hereby approve the Interborough Rapid Transit Company, the certificate of incorporation of which is hereunto annexed.

In Witness Whereof, the said Board of Rapid Transit Railroad Commissioners has caused this certificate to be duly executed in duplicate by its President and Secretary, under its official seal, this first day of May, 1902.

The Board of Rapid Transit Railroad Commissioners in and for the City of New York, by A. E.
4848 Orr, President.

Attest: Bion L. Burrows, Secretary.

(Seal)

At a meeting of the Board of Rapid Transit Railroad Commissioners in and for the City of New York, duly held on the first day of May, 1902, the following resoluton was duly adopted, viz.:

"Resolved, that, pursuant to the authority upon it conferred by chapter 4 of the Laws of 1891, as amended by Chapter 544 of the Laws of 1902, this Board does hereby approve the Interborough Rapid

Transit Company, a certificate for the incorporation whereof has been submitted to this meeting, and the President and Secretary of this Board are hereby authorized and directed to make and execute, under the seal of this Board, the certificate of approval of said corporation provided for in section 34 of the said act as so amended, in the form submitted to this meeting, and that a copy of said certificate of incorporation, and of said certificate of approval, be spread upon the minutes of this meeting."

4850

And I do further certify that a true copy of the certificate of incorporation of Interborough Rapid Transit Company hereto annexed was submitted to and approved by said Board at said meeting and that the certificate of approval authorized by said meeting is in the same form as the certificate of approval hereto attached.

In Witness Whereof, I have hereunto subscribed my name and affixed the official seal of the said Board this first day of April, 1902.

Bion L. Burrows, Secretary.

4851

(Seal)

The Board of Rapid Transit Railroad Commissioners in and for the City of New York.

Filed in the office of the Secretary of State on May 6th, 1902, and in the office of the Clerk of New York County on May 7th, 1902 (pages 8 to 20 of Claimants' Exhibit "A").

"Manhattan Railway Company to Interborough Rapid Transit Company, Lease."

4852 *Claimants' Exhibits.*

(Here follows the lease which is printed at pages 1139 to 1181 of the record.)

"Endorsed: 'Filed in the office of the Secretary of State of New York on April 4, 1903.' 'Recorded in the office of the Register of the County of New York, in Liber 2 of General Conveyances, at page 35, on April 1, 1903'" (pages 21 to 60 of Claimants' Exhibit "A").

Claimants' Exhibit "B"—Documentary Proof of Title.

4853

In Re Condemnation 42nd Street Spur.
Documentary Proof of Title.

		Manhattan Orgahization Papers	"Statutes and Documents"
1.	Chap. 140, Laws of 1850		
2.	Chap. 697, Laws of 1866	421	1
3.	Chap. 489, Laws of 1867	428	4
3a.	Chap. 855, Laws of 1868	435	8
4.	Chap. 595, Laws of 1875	438a.	42
5.	Chap. 606, Laws of 1875		115
6.	Proceedings of Board of Rapid Transit Commissioners appointed by the Mayor under Sec. 606 Laws of 1875,	977–1347	
	(a) Petition to the Mayor	978	
	(b) Resolution determining routes N. Y. El. RR. Co. Sept. 2/75..	1124–1137	
4854	(c) Report of the Commission to the Mayor	1165	
	(d) Approval by the Board of Aldermen of the routes determined by the Commission	1181	
	(e) Resolution of the Commission determining plans, specifications and requirements for the construction of the N. Y. El. R. R. Co. October 4, 1875	1243	
	(f) Determination of the Plans and Specifications for Railway Company to be organized by the Commission, October 4, 1875, (The Manhattan Ry. Co.)	1268	
	(g) Report by the Commission to the Mayor Oct. 6, 1875	1284	
	(h) Articles of Assn. prepared by the Commission for the Manhattan Ry. Co. October 27, 1875	1295	129

Claimants' Exhibits.

4855

7.	Proceedings giving consent by General Term to construction New York Elevated Railroad,		
	(a) Petition for appointment of commissioners	391	147
	(b) General Term order appointing commissioners	394-6	149
	(c) Report of Commissioners	398	151
	(d) The General Term order confirming report	406	155
	Confirmed Matter of N. Y. El. Ry. Co. 70 N. Y. 327		
8.	Report of Governor's Commission, Dec. 30, 1879, approving the east side New York El. R. R. Co. lines	409	38
9.	Approval on Sept. 7, 1875 by the Common Council and Mayor of the routes, adopted by the Commission	408	155
	See Mayor v. Man. Ry. Co. 143 N. Y. 1, 34		

4856

10.	Lease of N. Y. El. R. R. Co. to Manhattan Ry. Co., Aug. 1, 1884	348	168
11.	Proceedings merging the Manhattan and New York Companies January 25, 1890	118	192
12.	Incorporation of Interborough Rapid Transit Co.	8	
13.	Lease of Manhattan Ry. Co. to Interborough R. T. Co., January 1, 1903	21	

Claimants' Exhibit "C"—Extracts from Volume of Statutes and Documents Affecting the Elevated Railways in the City of New York.

4857

"Statutes affecting the New York Elevated Railroad Company, Mortgages, Licenses, etc.

An Act supplementary to the Act entitled 'An Act to authorize the formation of Railroad Corporations, and to regulate the same,' passed April 2d, 1850.

Passed April 20, 1866, Chapter 697" (pp. 1 to 2 of Claimants' Exhibit "C").

(Here follows Chapter 697, Laws of 1866, which is covered by stipulation printed at p. 1877 of the record.)

4858 *Claimants' Exhibits.*

"ACT OF 1867
CHAPTER 489

An Act to provide for the Construction of an Experimental line of railway, in the Counties of New York and Westchester. Passed April 22, 1867" (pp. 4 to 7 of Claimants' Exhibit "C").

(Here follows Chapter 489, Laws of 1867, which is covered by stipulation printed at p. 1877 of the record.)

"ACT OF 1868
CHAPTER 855

4859 An Act supplementary to Chapter 489 of the laws of 1867, and to provide for the collection and application of Revenue in the County of New York, in certain cases. Passed June 3d, 1868" (pp. 8 and 9 of Claimants' Exhibit "C").

(Here follows Chapter 855, Laws of 1868, which is covered by stipulation printed at p. 1877 of the record.)

"ACT OF 1875
CHAPTER 595

4860 An Act to authorize and require the New York Elevated Railroad Company to continue and complete its railroad in the City of New York, and to regulate the construction, operation and management thereof. Passed June 17, 1875" (pp. 42 & 43 of Claimants' Exhibit "C").

(Here follows Chapter 595, Laws of 1875, which is covered by stipulation printed at p. 1877 of the record.)

"Statutes and articles of association affecting the Manhattan Railway Company.

Claimants' Exhibits.

4861

RAPID TRANSIT ACT

CHAPTER 606

An Act further to provide for the construction and operation of a steam railway or railways in the Counties of the State. Passed June 18, 1875; three-fifths being present" (pp. 115 to 128 of Claimants' Exhibit "C").

(Here follows Chapter 606, Laws of 1875, which is covered by stipulation printed at p. 1877 of the record.)

"Articles of Association of the Manhattan Railway Company, prepared pursuant to Chapter 606, Laws of 1875, by the Board of Commissioners appointed by the Mayor of the City of New York in compliance with the provisions of said act" (pp. 129 to 146 of Claimant's Exhibit "C").

4862

(Here follows the Articles of Association of the Manhattan Railway Company, which are printed at pp. 1526 to 1552 of the record.)

"Proceedings giving consent to construction and operation of elevated railroads" (pp. 147 to 155 of Claimants' Exhibit "C").

(Here follows (a) petition for appointment of Commissioners; (b) General Term order appointing Commissioners; (c) report of Commissioners; and (d) General Term order confirming report, which are printed at pp. 1575 to 1589 of the record.)

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"Approval by the Commissioners of the location, plans, structures, stations, etc., of and upon so much of the New York Elevated Railroad as lies on what is designated as the 'East Side,' etc., December 30th, 1879" (pp. 38 and 39 of Claimants' Exhibit "C").

(Here follows the approval which is printed at pp. 1589 to 1592 of the record.)

4864

"Resolution of the Common Council of the City of New York, adopted September 7th, 1875" (p. 155 of Claimants' Exhibit "C").

(Here follows resolution which is printed at pp. 1592 and 1593 of the record.)

LEASE OF NEW YORK COMPANY.

This Indenture, made on the 20th day of May,
4865 eighteen hundred and seventy-nine, between The New York Elevated Railroad Company, a corporation duly organized and existing under the laws of the State of New York, hereinafter called The New York Company, party of the first part, and the Manhattan Railway Company, a corporation also duly organized and existing under the laws of the State of the State of New York, hereinafter called the Manhattan Company, party of the second part.

Witnesseth: That whereas, the party of the first part is authorized to construct and operate a line of elevated railway in the City of New York,
4866 and in the County of Westchester, a portion of which railway in the City of New York is now completed and in operation, and it is engaged in constructing other parts of its said elevated railways;

And whereas, a certain other railroad company, organized and existing under the name of The Metropolitan Elevated Railway Company, is the owner of, and engaged in operating certain lines of elevated railway in the City of New York over routes heretofore established by law for said company, which railways and routes at various places unite with the railways and routes of the New

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York Company, and cross and connect and unite therewith at the same level;

And whereas, the development of the business of passenger traffic on elevated railways in the City of New York has made it necessary for each of said companies to run trains in such manner, and with such speed and frequency, that the crossing of the trains of one Company over and upon the tracks of the other company, and the running of the trains of both companies upon the portions of track and route jointly owned or used by them, is deemed impracticable except at the risk of inconvenience and delay to the public and danger to human life;

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And whereas, after protracted efforts to devise plans for operating all said lines so as to afford to the public perfect accommodation and safety, it is the opinion of both companies that such management cannot be assured while the trains of the two companies are run under the control of different managing officers, or otherwise than by placing the lines of both companies under one control, with power to change from time to time the termini of routes to regulate and limit the passage of trains from the tracks of one company upon the tracks of the other at the connecting and crossing points, and to do such other things and make such other changes from time to time in the management of traffic upon the lines of both railways as experience may show to be necessary or desirable;

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And whereas, the Manhattan Company is by law authorized to construct and operate elevated railroads in the City of New York, whether owned or leased by it, and is willing and desirous to accept,

4870 and the New York Company and the Metropolitan Elevated Railway Company have agreed to execute and deliver to it leases of all their respective railways and properties, as described in this instrument and in a similar instrument of even date herewith to be executed by the Metropolitan Elevated Railway Company as lessor to the Manhattan Company upon all and singular the terms, agreements, and conditions, herein and therein mentioned and set forth;

4871 And whereas, the New York Company has heretofore executed to certain trustees, its first mortgage bearing date the first day of January, 1876, and recorded in the office of the Register of the City and County of New York, in Liber 1258 of Mortgages, page 422, securing the bonds therein provided for, the total amount thereof now issued and agreed to be issued, being the sum of eight million five hundred thousand dollars of principal;

4872 And whereas, the New York Company may be hereafter required by the Manhattan Company to issue further amounts of the said bonds secured by said mortgage in excess of said eight million five hundred thousand dollars, for the purpose of constructing and equipping extensions of the line of the New York Company, payment of all which bonds, principal and interest, is to be assumed by the Manhattan Company;

And whereas, the New York Company has issued and agreed to issue its capital stock to the amount at its par value of six millions five hundred thousand dollars, upon which stock the Manhattan Company has agreed to guarantee the payment

of a dividend of ten per cent. per annum, as hereinafter provided; 4873

Now, therefore, this Indenture witnesseth: That the New York Company, for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained on the part and behalf of the Manhattan Company to be paid, kept and performed, hath granted, demised and leased, and by these presents doth grant, demise and lease unto the Manhattan Company all and singular the railroad or railway now owned, operated, or constructed by it in the City of New York, as above described, and all and singular the unfinished portions thereof now under construction, together with all its franchises, right and privileges relating thereto, or to the construction and operation of its entire railway as authorized, subject to the said mortgage and to the terms and conditions under which said franchises are held by the company, with all and singular the right, title, estate and interest which the New York Company has in any real estate in the City of New York heretofore acquired by it, or which it may hereafter acquire under contracts already made therefor, being all and singular the entire property and estate of said New York Company, excepting such of its franchises, rights and privileges as are or may be necessary to preserve its corporate existence or organization and its interest in the covenants and conditions of this indenture. 4874 4875

To have and to hold the said railways, premises, and appurtenances unto the Manhattan Company and its successors for the term of nine hundred and ninety-nine years from the date of organization of the Manhattan Company, to wit: November 1st, eighteen hundred and seventy-five, or so long

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as it shall continue to exist as a corporation and be capable of exercising all the functions herein stipulated on its behalf, the Manhattan Company and its successors yielding and paying therefor unto the New York Company, its successors and assigns, yearly in each and every year during the term hereby granted, the yearly rent of ten thousand dollars, payable semi-annually on the first days of January and July during the said term; the first payment of five thousand dollars to be made on the first day of July, eighteen hundred

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and seventy-nine, and keeping and performing all and singular the covenants and agreements hereinafter set forth, to be by the Manhattan Company kept and performed.

Article First.—The Manhattan Company hereby assumes, and covenants and agrees to pay, as the same respectively becomes due, the principal and interest of the above recited first mortgage bonds of the New York Company, and keep it safe and harmless at all times, from all claims and demands against it arising from or under the said bonds or any of them.

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Article Second.—The Manhattan Company guarantees to the New York Company an annual dividend of ten per cent. on the capital stock of the New York Company, to the amount of six million five hundred thousand dollars, that is to say: the Manhattan Company will, each and every year during the term hereby granted, beginning with the first day of October, eighteen hundred and seventy-nine, pay to the New York Company six hundred and fifty thousand dollars, free of all taxes, in equal quarter-yearly payments of one hundred and sixty-two thousand five hundred dollars each, on

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the first days of January, April, July and October, in each year, the first of such payments to be made on the first day of January, eighteen hundred and eighty; and the Manhattan Company will, from time to time, execute in proper form a guaranty to the above effect, printed or engraved upon the certificates of stock of the New York Company; and, as such stock certificates are surrendered for cancellation and reissue, will from time to time, upon request of the holder, renew such guaranty upon all reissued certificates.

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Article Third.—The portions of the railway of the New York Company, which were completed on the thirty-first day of January, eighteen hundred and seventy-nine, shall be deemed to have been operated from the close of business hours on that day by the Manhattan Company, and all such operation from and after that time shall be for the account of the Manhattan Company.

Article Fourth.—The Manhattan Company shall, at its own proper cost, from time to time, and whenever necessary for the use of the New York Company, make out and furnish to said New York Company any and all reports and statements which the latter shall or may hereafter be by law required to make or file.

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Article Fifth.—The Manhattan Company shall, at its own proper cost and expense, operate and run the demised railways during the said term in the same manner as the New York Company is now or shall at any time hereafter be required or authorized by law to do; and shall and will maintain, preserve and keep the railways and premises hereby demised and every part thereof in thorough repair, working order and condition, and supplied

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with rolling stock and equipments, so that the business of the said demised railways shall be preserved, encouraged and developed, the business thereof be done with safety and expedition, the public be accommodated in respect thereto, with all practicable conveniences and facilities, and the future growth of such business as the same may arise or be reasonably anticipated, be fully provided for and secured.

Article Sixth.—In addition to the rental hereinbefore provided, the Manhattan Company shall

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also pay and discharge as the same may become due any and all taxes, assessments, duties, imposts, dues and charges whatsoever, which shall become payable by or be levied, assessed or imposed during the said term by any lawful authority upon the New York Company, or upon the demised railways, premises, or any part thereof, or the business earnings or income of the same.

Article Seventh.—Possession of the demised railway and premises shall be given by the New York Company to the Manhattan Company on the fifth day of June, eighteen hundred and seventy-

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nine; and upon delivery of such possession, the New York Company shall transfer and deliver to the Manhattan Company, for use upon the said demised railways and premises, all machinery, tools, implements, furniture, fuel, material or other railroad supplies belonging to the New York Company, which shall have been procured for the use of the said railways; and the Manhattan Company shall and will, at the end of the term aforesaid or other sooner termination of this lease, transfer and deliver in return to the New York Company all such machinery, tools, implements, fuel, ma-

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terials and other railway supplies as may have been procured for the use of said railways or any of them as shall then remain on hand, and which shall be at least equal in quantity and value to those received by it from the New York Company hereunder.

Article Eighth.—The Manhattan Company shall and will at all times during the term aforesaid, hold, save and keep harmless and indemnify the New York Company from and against all expenses of operating the demised railways and premises, and from all damage, liabilities, actions, causes of actions, suits, claims and demands for injuries to persons or property, or for causing the death of any person, or for any other thing in the operation or management of the demised property, or for any breach of contract or wrong done or suffered by the Manhattan Company in the carrying on of the business pertaining thereto; and shall and will defend all suits and claims brought against the New York Company in respect to any matter or thing arising out of the management or operation of the said railways since the thirty-first day of January, eighteen hundred and seventy-nine.

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Article Ninth.—In case the Manhattan Company or its successors shall at any time during said term fail or omit to pay in full the cash rental hereinbefore mentioned, or the guaranteed dividend aforesaid, as the same shall be come payable, or fail or omit to keep and perform the covenants and agreements herein contained, or any of them, and continue in default in respect to the performance of such covenant or agreement or payments for the period of ninety days, then and in either and every such case it shall be lawful for the New

4888 York Company, its successors or assigns, at its or their own option, to enter upon the railways and premises hereinbefore demised, and any and every part thereof, and to remove all persons therefrom; and from thenceforth the said demised railways and premises with the equipments and appurtenances thereof, and all additions and improvements which shall have or may have been made to the same, to have, hold, possess and enjoy as of the first or former estate of the said New York Company, and upon such entry for non-payment
4889 of cash rental or dividend, or breach or non-performance of any covenant or agreement herein contained, all the estate, right, title, interest, property, possession, claim and demand whatsoever of the Manhattan Company or its successors in or about the said demised railway and premises, or either or any part of either thereof, shall wholly and absolute cease, determine and become void, anything hereinbefore contained to the contrary in any wise notwithstanding; but no re-entry shall waive or prejudice any claim or right of the New York Company to or for damages against the
4890 Manhattan Company on account of such non-payment or non-performance or breach, and all *such claims* and rights are hereby expressly reserved to the New York Company.

Article Tenth.—The New York Company hereby covenants and agrees that it shall and will, at any time when requested by the Manhattan Company or its successors, execute, acknowledge and deliver to the Manhattan Company or its successors, at their proper cost and expense, any and all such other or further instruments and assurances in the law for the better granting, demising and leasing of said railways and premises to the

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Manhattan Company and its successors, upon and subject to all and singular, the rents, covenants, agreements and conditions hereinbefore reserved and mentioned, as by the Manhattan Company or its successors, or by its or their counsel learned in the law, shall reasonably be advised, devised or required; and the Manhattan Company covenants, promises and agrees to and with the New York Company, its successors and assigns, that it and its successors shall and will, whenever thereunto requested by the New York Company, its successors or assigns, execute, acknowledge and 4892
deliver any and all instruments for the more effectual assuring unto the New York Company, its successors or assigns, the payment of the cash rental and dividends hereinbefore reserved or agreed to be paid, and the performance of the promises and agreements hereinbefore set forth on the part and behalf of the Manhattan Company to be performed, as by the New York Company, its successors and assigns, or by its or their counsel learned in the law shall be reasonably advised, devised or required.

Article Eleventh.—This lease, the agreements 4893
herein contained, the term, property and franchises herein granted and demised, shall not nor shall any or any part of the same be released, transferred, sub-let, assigned or incumbered, except with the written assent of the New York Company and of the Metropolitan Company thereto first had and obtained; but nothing in this article contained shall extend to the case of a disposition by the Manhattan Company of any equipment or supplies replaced by it with other equivalent property, or to the case of a continuance or renewal of the corporate existence of the Manhattan Com-

4894 pany, which continuance or renewal for the whole of said term hereby granted, the Manhattan Company, agrees to procure before the expiration of the term of its existence now fixed in its articles of association.

Article Twelfth.—The Manhattan Company agrees that it will establish and maintain a sinking fund for the payment of the said first mortgage bonds, and for that purpose will, on or before the first day of January, eighteen hundred and ninety, and on or before each first day of January
4895 thereafter, during the currency of any of the said bonds, pay to the trustees of the said mortgage a sum equal to one per centum of the largest aggregate amount of the principal of said bonds which shall have been outstanding at any time preceding such payment; which sum, with the interest accrued thereon, shall be applied by such trustees to the purchase in open market, within ninety days after receipt thereof, of so many of the said bonds with their unmatured coupons as the trustees shall be able to acquire at the market price thereof, but not exceeding the rate of twelve
4896 hundred dollars for each such bond with its coupons, which bonds and coupons shall thereupon be cancelled by the trustees and delivered to the New York Company so to remain; and in case and to the extent that such purchases cannot be so made, then the trustees shall notify the New York Company thereof, and any sums so remaining, with all accumulations thereof, shall be invested and reinvested from time to time by the trustees in such first class railway securities, or other sufficient securities as shall from time to time be designated by the New York Company, and approved by the trustees, all which invest-

ments and reinvestments shall be made in the name of, and be held by the trustees until the said bonds mature, and thereupon the trustees shall apply the fund toward the payment of the bonds then outstanding. And as to all bonds not extinguished under the operations of the said sinking fund, it shall be at the option of the Manhattan Company, by written notice duly served upon the New York Company at any time within six and not less than three months before the maturity of the present bonds, to require the New York Company to renew or extend the time of pay- 4898
ment of the whole or any part thereof, by agreement with the holders, and do all acts and things and execute and deliver all instruments or writings requisite for such extension or renewal, or to execute and deliver to the present or any other trustee agreed upon by the parties, its mortgage upon all its then property, securing its bonds to be issued thereunder to an amount equal to the amount of its present bonds then outstanding and not provided for by said sinking fund, and the said new bonds to issue and deliver to the trustees, to be sold or disposed of according to the direc- 4899
tion of the Manhattan Company, and the funds thus realized shall be applied to the payment and retirement of all said outstanding and unprovided for first mortgage bonds of the present issue. Said mortgage shall contain a sinking fund clause substantially like that herein, and shall be substantially in the terms of the present mortgage, and the bonds secured thereby shall be similar in terms to the present bonds of the New York Company, and shall be due at such time or times and with such rate of interest as may be directed by the Manhattan Company; and payment of principal

4900 and interest on all of said bonds shall be assumed by, and chargeable upon the Manhattan Company, in all respects as is herein provided as to the present outstanding bonds.

Article Thirteenth.—For the better carrying into effect the provisions of this instrument, The New York Company hereby constitutes the Manhattan Company its agent and attorney to do in its name any and all things necessary to be done for the complete execution of this indenture.

4901 In Witness Whereof, the said two companies have caused this indenture to be subscribed with their names by the Presidents and Secretaries of the said companies, and the corporate seals of the said companies to be hereto affixed, the day and year first above written.

The New York Eleveated Railroad Company, By Cyrus W. Field, President, (Seal)
F. E. Worcester, Secretary.

The Manhattan Railway Company, By Wm. R. Garrison, President, (Seal)
N. Guilford, Secretary.

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State of New York, City and County of New York.

On this twenty-first day of May, in the year eighteen hundred and seventy-nine, before me personally came Franklin E. Worcester, Secretary of The New York Elevated Railroad Company of the City of New York, with whom I am personally acquaitned, who, being by me duly sworn, said, that he resided in the City of Brooklyn, that he was the Secretary of The New York Elevated Railroad Company of the City of New York, that he

knew the corporate seal of the said Company, that the seal affixed to the within instrument was such corporate seal; that it was so affixed by order of the Board of Directors of the said Company, and that he signed his name thereto by the like order as Secretary of the said Company. And the said Franklin E. Worcester further said that he was acquainted with Cyrus W. Field, and knew him to be the President of said Company, that the signature of the said Cyrus W. Field subscribed to the said instrument was in the genuine handwriting of the said Cyrus W. Field, and was thereto subscribed by the like order of the said Board of Directors, and in the presence of him, the said Franklin E. Worcester. 4903 4904

William Molloy, Notary Public, Kings County, N. Y.

State of New York, City and County of New York.

On this twenty-first day of May, in the year eighteen hundred and seventy-nine, before me personally came Nathan Guilford, Secretary of The Manhattan Railway Company of the City of New York, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the City of New York, that he was the Secretary of The Manhattan Railway Company of the City of New York; that he knew the corporate seal of the said Company; that the seal affixed to the within instrument was such corporate seal; that it was so affixed by order of the Board of Directors of the said Company; and that he signed his name thereto by the like order as Secretary of the said Company. And the said Nathan Guilford fur- 4905

4906 ther said that he was acquainted with William R. Garrison, and knew him to be the President of said Company; that the signature of the said William R. Garrison, subscribed to the said instrument was in the genuine handwriting of the said William R. Garrison, and was thereto subscribed by the like order of the said Board of Directors, and in the presence of him, the said Nathan Guilford.

William Molloy, Notary Public, Kings County, N. Y.

4907 Recorded in the office of the Register of the City and County of New York, in Liber 1493, of Conveyances, page 304, on the 17th day of June, A. D., 1879, at 10 o'clock and 36 minutes, A. M., and examined.

Witness my hand and official seal.

F. W. Loew, Register. (Seal)

(Pages 168 to 175 of Claimants' Exhibit "C".)

4908 MERGER AGREEMENT
November 14th, 1881.

This Agreement, made the fourteen day of November, 1881, between the Manhattan Railway Company, the New York Elevated Railroad Company, and the Metropolitan Elevated Railway Company, hereinafter called respectively the New York, Manhattan and Metropolitan companies, witnesseth: That the said companies having heretofore and on the twenty-second day of October, 1881, made an agreement and supplemental agreement modifying to a certain extent the tripartite agreement and leases made between the same

companies on the twentieth day of May, 1879, do now further agree, each with both and each of the others as follows: 4909

1. That the Manhattan Company shall take a surrender or transfer of the capital stock of the stockholders of each of the other two companies or of the stock of so many of such stockholders as may choose to make such surrender or transfer, and issue in exchange therefor the like additional amount of the stock of the Manhattan Company, on the terms and conditions following.

2. The stock thus to be issued to the stockholders of the New York Company shall be called first preferred stock, and shall be entitled to the payment of dividends at the rate of 6 per cent. per year, payable quarterly out of the net earnings of the company during the year before any dividend is paid to a stockholders of any other class; and if the net earnings in any year prove insufficient to pay the 6 per cent. dividend herein provided for, the whole of the net earnings are nevertheless to be divided, and any deficiency below 6 per cent. is to remain due and be accumulated and paid so soon as there shall be net earnings sufficient to pay the same, or so far as the net earnings will go; that is to say, the net earnings of each quarter are to be divided among the first preferred stockholders until they shall have received full dividends at the rate of 6 per cent. per year on each share of first preferred stock, the whole of such preferred stock not exceeding $6,500,000. By net earnings are to be understood the gross earnings after deducting therefrom operating expenses, the cost of maintaining in efficiency the structure and equipment, all lawful taxes and 4910 4911

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assessments and the interest on the then outstanding bonds of the New York and Mentropolitan Companies. The first preferred stock is not entitled to any dividend beyond that herein provided for.

3. Each stockholder of the New York Company shall receive a cash payment of $10 a share on surrendering his stock to the Manhattan Company, in addition to his corresponding certificate of first preferred stock of the Manhattan Company.

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4. The stock to be issued to the stockholders of the Metropolitan Company shall be called second preferred stock, and shall be entitled to the payment of dividends at the rate of 6 per cent. a year, payable quarterly out of the net earnings of the Company during the year after the first preferred stockholders have received full dividends at the rate of 6 per cent. a year on each share of first preferred stock for all time previous; but if the net earnings in any year after the payment of dividends to the first preferred stockholders do not amount to 6 per cent., the deficiency is not to be made up out of the earnings of any future year or in any manner whatever. The second preferred stock is not to be entitled to any dividend beyond that herein provided for.

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5. The stock not thus issued—that is, the present stock of the Manhattan Company, amounting to $13,000,000—shall be called common stock, and shall be entitled to all dividends out of the net earnings of the company after payment of the dividends to the first and second preferred stockholders according to the terms of this agreement.

6. All the stock so surrendered or transferred

to the Manhattan Company shall be retained by it uncanceled as a muniment of title or for other use, and subject to such disposition as may be necessary to maintain the rights not only of the parties hereto, but also of those who have received the stock of this company in exchange for it and such as may be agreeable to law. 4915

7. Any further instrument that may be necessary to carry out this agreement and maintain the rights of the said companies and their respective stockholders shall be from time to time executed by the parties hereto. 4916

8. Nothing herein contained shall impair the validity or force of the said tripartite agreement and leases dated May 20, 1879, and said agreement and supplementary agreement dated October 22, 1881, except as herein expressed, but in all other respects the said tripartite agreement and leases and the said subsequent agreement and supplemental agreement are confirmed.

In witness whereof, the said three parties have caused these presents to be subscribed with their names by their respective presidents or vice-presidents and secretaries, or assistant secretaries, and the corporate seals of the said companies to be hereto affixed the day and year first above written. 4917

Manhattan Railway Company, by Jay Gould, President. (L. S.)

Attest—D. W. McWilliams, Secretary.

The New York Elevated Railroad Company, by Cyrus W. Field, President. (L. S.)

Attest—Thos. Gerehart, Assistant Secretary.

4918

The Metropolitan Elevated Railway Company, by Russell Sage, President. (L. S.)

Attest—John E. Body, Secretary.

State of New York, City and County of New York, ss.

On this fourteenth day of November, 1881, before me personally came D. W. McWilliams, Secretary of The Manhattan Railway Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city

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of Brooklyn, that he was the Secretary of The Manhattan Railway Company, that he knew the corporate seal of the said Company, that the seal affixed to the foregoing instrument was such corporate seal; that it was so affixed by order of the Board of Directors of the said Company, and that he signed his name thereto by the like order as Secretary of the said Company. And the said D. W. McWilliams further said that he was acquainted with Jay Gould, and knew him to be the President of the said Company, that the signature of the said Jay Gould subscribed to the said in-

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strument was in the genuine handwriting of the said Jay Gould and was thereto subscribed by the like order of the said Board of Directors, and in the presence of him, the said D. W. McWilliams.

William Molloy, Notary Public, Kings County, N. Y. (Certificate filed in New York County.)

State of New York, City and County of New York, ss.

On this fourteenth day of November, 1881, before me personally came Thomas Gerehart, Assistant Secretary of The New York Elevated Railroad Company, with whom I am personally ac-

quainted, who, being by me duly sworn, said that he resided in the city of New York, that he was the Assistant Secretary of The New York Elevated Railroad Company, that he knew the corporate seal of said Company, that the seal affixed to the foregoing instrument was such corporate seal; that it was so affixed by order of the Board of Directors of the said Company, and that he signed his name thereto by the like order as Assistant Secretary of the said Company. And the said Thomas Gerehart further said that he was acquainted with Cyrus W. Field and knew him to be the President of the said Company, that the signature of the said Cyrus W. Field subscribed to the said instrument was in the genuine handwriting of the said Cyrus W. Field and was thereto subscribed by the like order of the said Board of Directors, and in the presence of him, the said Thomas Gerehart.

William Molloy, Notary Public, Kings County, N. Y. (Certificate filed in New York County.)

State of New York, City and County of New York, ss.:

On this fourteenth day of November, 1881, before me personally came John E. Body, Secretary of The Metropolitan Elevated Railway Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of New York, that he was the Secretary of The Metropolitan Elevated Railway Company, that he knew the corporate seal of the said Company, that the seal affixed to the foregoing instrument was such corporate seal; that it was so affixed by order of the Board of Directors of the said Company, and that he signed his name thereto by the like order as Secretary of the said Company. And

4924 the said John E. Body further said that he was acquainted with Russell Sage, and knew him to be the President of the said Company, that the signature of the said Russell Sage subscribed to the said instrument was in the genuine handwriting of the said Russell Sage, and was thereto subscribed by the like order of the said Board of Directors, and in the presence of him, the said John E. Body.

William Molloy, Notary Public, Kings County, N. Y. (Certificate filed in New York County.)

4925 (Pages 192 to 195 of Claimants' Exhibit "C".)

Claimants' Exhibit "D"—Original Plan of Spur, December 30, 1879.

(This map is printed at page 1902 of the record.)

Claimants' Exhibit "E"—Resolution of Board of Estimate and Apportionment, Duly Adopted October 19, 1923, Directing Removal of Columns from Street to Curb.

4926 Board of Estimate and Apportionment, City of New York (Cal. No. 24-B)

Whereas, The authority, pursuant to which the elevated railroad structure in East 42d street, between 3d and Park avenues, in the Borough of Manhattan, City of New York, was erected, provided that the columns supporting the tracks of the elevated railroad structure in said East 42d street, between 3d and Park avenues, should be placed at the curb lines of said street; and

Whereas, It appears that the existing columns supporting the tracks of the elevated railroad

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structure in East 42d street, between 3d avenue and Park avenue, are located within the roadway of said East 42d street, about 8 feet from the curb lines of said street; and

Whereas, Said columns supporting said elevated railroad structure are in said roadway of said street without legal authority and in violation of the provisions of law governing the uses of streets in the City of New York; therefore

Resolved, That the President of the Borough of Manhattan be and he hereby is directed and required forthwith to serve notice on the Manhattan Railway Company, owner and lessor, and the Interborough Rapid Transit Company, lessee of the elevated railroad structure in East 42d street, between 3d and Park avenues, in the Borough of Manhattan, City of New York, to remove within thirty (30) days from the service of said notice, the columns supporting said elevated railroad structure from their present location in the roadway of said street to the line of the curb thereof.

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Resolved, That in case the said Manhattan Railway Company, owner and lessor, and the Interborough Rapid Transit Company, lessee, shall fail to remove the said columns within thirty (30) days from the service of said notice on the said companies, then the said President of the Borough of Manhattan is hereby directed, authorized and empowered to remove said columns from the roadway of said street to the curb thereof, and the expense of such removal and the restoration of said street to its former condition will be charged against said companies.

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Resolved, That the notice hereby required to be

served by the President of the Borough be prepared by the Corporation Counsel and served under his direction.

Claimants' Exhibit "F"—Resolution of Board of Estimate and Apportionment, Duly Adopted October 19, 1923, Directing Removal of Stairway at 42nd St. and Park Ave.

Board of Estimate and Apportionment, City of
4931 New York (Cal. No. 24-A)

Whereas, The Manhattan Railway Company, as owner and lessor, is maintaining a stairway leading from the sidewalk to the station of the elevated railroad structure in East 42d street, between 3d and Park avenues, in the Borough of Manhattan, City of New York, which stairway is situated within the lines of 42d street, on the north side thereof at Park avenue, at the westerly end of the structure; and

Whereas, Said stairway was erected without le-
4932 gal authority and is used and maintained in violation of the provisions of law governing the uses of streets in the City of New York, and is an illegal incumbrance obstructing said street; therefore

Resolved, That the President of the Borough of Manhattan be and he hereby is directed and required forthwith to serve notice on the Manhattan Railway Company, owner and lessor, and the Interborough Rapid Transit Company, lessee of the elevated railroad structure in East 42d street, between 3d and Park avenues, in the Borough of Manhattan City of New York, to remove within thirty (30) days from the service of this notice,

from the lines of said East 42d street the stairway leading from the sidewalk to the station of the elevated railroad structure in East 42d street, between 3d and Park avenues, in the Borough of Manhattan, City of New York, which stairway is situated within the lines of 42d street on the north side thereof at Park avenue at the westerly end of the structure. 4933

Resolved, That in case the said Manhattan Railway Company, owner and lessor, and the Interborough Rapid Transit Company, lessee, shall fail to remove the said stairway from within the lines of said 42d street within thirty (30) days from the service of said notice on the said companies, then the said President of the Borough of Manhattan is hereby directed, authorized and empowered to remove said stairway from said street, and the expense of such removal and of the restoration of said street to its former condition will be charged against said companies. 4931

Resolved, That the notices hereby required to be served by the Borough President, be prepared by the Corporation Counsel and served under his direction. 4935

Claimants' Exhibit "G"—Plan of Changes at 3rd Ave. and 42nd St.

(This plan is printed at page 1904 of the record.)

Claimants' Exhibits "H-1" to "H-19"—19 Photographs.

(These photographs are printed at pages 1906 and 1908 of the record.)

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Claimants' Exhibits "H-20" to "H-38" and "H-42" to "H-46"—24 Photographs.

(These photographs are printed at pages 1906 and 1908 of the record.)

Claimants' Exhibit "J-1"—Conveyance and Release, Julia E. Ford, et al. to Interborough Rapid Transit Co., N. Y. El. R. R. Co. & Manhattan Railway Co.

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Whereas, the title to the premises hereinafter described became vested in fee in Julia A. Shaw prior to and on the 1st day of July, 1880, and she remained so seized and possessed thereof until the 6th day of November, 1901, when she died leaving her last will and testament dated September 26th, 1900, duly probated in Westchester County, New York, on the 18th day of November, 1901, whereby she devised her residuary estate, which included said premiess, to her two children, Julia E. Ford and Samuel T. Shaw, and appointed her said two children and Simeon Ford executors and trustees

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under her said will, with full power of sale over her real estate; and letters testamentary were duly issued to them on the 19th day of November, 1901, which letters remain unrevoked and in full force and effect; and

Whereas, ever since the death of Julia A. Shaw the title to said premises has been and now is vested in fee in said Julia E. Ford and Samuel T. Shaw; and

Whereas, the said premises are bounded and described as follows:

First Parcel:

Beginning at a point on the southerly side of 42nd Street distant sixty-four feet and one inch easterly from Park Avenue; running thence easterly along the southerly side of 42nd Street sixty-six feet; thence southerly parallel or nearly so with Park Avenue ninety-eight feet and nine inches more or less, thence westerly parallel or nearly so with 42nd Street sixty-six feet; thence northerly parallel or nearly so with Park Avenue, ninety-eight feet and nine inches more or less to the place of beginning.

Second Parcel:

Beginning at the corner formed by the intersection of the southerly side of 42nd Street with the easterly side of Park Avenue; running thence easterly along the southerly side of 42nd Street sixty-four feet and one inch; thence southerly along the premises described as the first parcel herein seventy-five feet more or less; thence westerly parallel or nearly so with 42nd Street sixty-four feet and one inch to the easterly side of Park Avenue; thence northerly along the easterly side of Park Avenue about seventy-five feet to the place of beginning; being now or formerly known as "Westchester House."

said premises being known as Nos. 100 to 108 East 42nd Street, in the City of New York; and

Whereas, appurtenant to said premises there are claimed to be certain rights or easements to the enjoyment of the street adjacent thereto, as an open public street and an interest or estate in the land forming the bed of the said street; and

Whereas, adjacent to the lands and premises above described, the parties hereinafter named of

4942 the last part, and their lessee, the Interborough Rapid Transit Company, are maintaining and operating an elevated railroad constructed by them, or one of them, or the predecessor of one of them; and

Whereas, the parties hereto desire and intend, for the consideration hereinafter expressed, to settle and adjust all claims and causes of action against said companies or either of them, which may have arisen to the said parties of the first part,
4943 or which may hereafter arise to the said parties of the first part or their grantees, by reason of the construction, maintenance and operation of the said railroad adjacent to the said premises.

Now, Therefore, This Instrument Made This 5th day of February, 1907, between Julia E. Ford, Samuel T. Shaw and Joan Shaw, his wife, all of the City of New York; and Julia E. Ford, Samuel T. Shaw and Simeon Ford, as Executors of and Trustees under the last will and testament of Julia A. Shaw, deceased, parties of the first part, the Interborough Rapid Transit Company party of the
4944 second part, and the New York Elevated Railroad Company and the Manhattan Railway Company, corporations duly organized under the laws of the State of New York, parties of the last part,

Witnesseth, that for and in consideration of the sum of One fifty-two thousand one eighty-six and 11/100 dollars, with interest, the receipt whereof is hereby acknowledged, the parties of the first part hereby release the Interborough Rapid Transit Company, party of the second part, and the parties of the last part and each of them, from all claims, damages and cause or causes of action, which now exist in favor of the parties of the

first part or any of them and including all claims, damages, and cause or causes of action for depreciation in the value of the said premises, and loss of rents, or rental value, and annoyance or injury to the owner or occupant, and interference with the use of the said premises, or the easements appurtenant to the same, produced by the construction, maintenance or operation of the elevated railroad.

And the parties of the first part, hereby grant and convey to the parties of the last part, their successors and assigns, all the right, title and interest of the said parties of the first part, and which said executors and trustees have power to convey in said East Forty-second Street and the land forming the bed thereof, and the easements therein, appurtenant to said premises which are or may be necessary for the construction, maintenance and operation of an elevated railroad in said street, as the same is now constructed, maintained and operated, except as hereinafter stated, and the parties of the first part hereby authorize and consent to the maintenance of the said structure and the operation of the said railroad through the said street, and past the premises hereinbefore described, by the parties of the second and last parts, their successors, assigns, and lessees forever, without further compensation or further liability for any damages that may hereafter be sustained by the said premises or by the owner or occupant thereof, or by any person in privity of estate with the parties of the first part, caused by said maintenance and operation of said railroad as the same is now constructed, maintained and operated, except that the parties of the second and last parts and their successors, assigns, and lessees may upon the condi-

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4948 tion next hereinafter stated, at any time hereafter use, in the operation of their railroads, electricity or any other motive power, and may also make such repairs to or alterations in the present structure as they may deem expedient; provided, however, that in no case shall said structures, or the operation of trains thereon, be changed, enlarged or added to, so as to materially increase the encroachments upon the easements hereby released and conveyed or the existing burden upon the abutting property herein above described.

4949 And, the said Julia E. Ford and Samuel T. Shaw covenant with the parties of the last part as follows:

First: That the said covenantors are seized in fee simple as tenants in common of the said property and have good right to convey the same.

Second: That the parties of the last part shall quietly enjoy the said property.

Third: That the said property is free from encumbrances except a certain mortgage given to 4950 secure the payment of $500,000.

Fourth: That the said covenantors will execute or procure any further necessary assurance of the title to the said property.

Fifth: That the said covenantors will forever warrant the title to the said property.

In Witness Whereof, the parties of the first part

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have hereunto set their hands and seals the day and year first above written.

Julia E. Ford,
Individually and as executrix and trustee &c. (Seal)
Samuel T. Shaw,
Individually and as executor and trustee &c. (Seal)
Joan Baird Shaw, Simeon Ford, as Executor and Trustee &c.

Sealed and delivered in the presence of
Ada E. Lamb.

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Acknowledged on February 7, 1907, by Julia E. Ford and Samuel T. Shaw; on February 7th, by Joan Baird Shaw and on February 7, 1907, by Simeon Ford.

Claimants' Exhibit "J-2"—Conveyance and Release, 42nd St., Manhattanville and St. Nicholas Ave. Railway Co. to N. Y. El. R. R. Co. & Manhattan Railway Co.

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Whereas, The 42nd Street, Manhattanville and St. Nicholas Avenue Railway Company acquired title in fee simple to certain premises hereinafter described, by deed dated November 11, 1885, and ever since said date has been and now is seized and possessed thereof; and

Whereas, the said premises are bounded and described as follows, viz:

Beginning at a point on the Southerly side of 42nd Street, one hundred and twenty-five feet Westerly from the corner formed by the intersection of the Southerly side of 42nd Street with the Westerly side of Lexington Avenue, and running

4954 thence Southerly, parallel with Lexington Avenue, ninety-eight feet and nine inches; thence Westerly, parallel with 42nd Street, fifty feet; thence Northerly, parallel with Lexington Avenue, ninety-eight feet and nine inches to the Southerly side of 42nd Street, and thence Easterly, along the Southerly side of 42nd Street, fifty feet to the point or place of beginning, be the said several dimensions more or less, said premises being now known as Nos. 118 and 120 East 42nd Street, in the City of New York; and

4955 Whereas, appurtenant to said premises there are claimed to be certain rights or easements to the enjoyment of the street adjacent thereto, as an open public street and an interest or estate in the land forming the bed of the said street; and

Whereas, adjacent to the lands and premises above described, the parties hereinafter named of the last part are maintaining and operating an elevated railroad constructed by them or one of them, or the predecessor of one of them; and

Whereas, the parties hereto desire and intend, for the consideration hereinafter expressed, to
4956 settle and adjust all claims and causes of action against said companies, or either of them, which may have arisen to the said party of the first part or which may hereafter arise to the said party of the first part or its grantees, by reason of the construction, maintenance and operation of the said railroad adjacent to the said premises.

Now, Therefore, this instrument made this 26th day of September 1901, between The 42nd Street, Manhattanville and St. Nicholas Avenue Railway Company, a corporation duly organized under the laws of the State of New York, party of the first

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part and the New York Elevated Railroad Company and the Manhattan Railway Company, corporations duly organized under the laws of the State of New York, parties of the last part,

Witnesseth; That for and in consideration of the sum of Five thousand ($5,000.00) dollars, the receipt whereof is hereby acknowledged, the party of the first part hereby releases the parties of the last part and each of them, from all claims, damages, and cause or causes of action, which now exist in favor of the party of the first part and including all claims, damages, and cause or causes of

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action for depreciation in the value of the said premises, and loss of rents, or rental value, and annoyance or injury to the owner or occupant, and interference with the use of the said premises, or the easements appurtenant to the same, produced by the construction, maintenance or operation of the elevated railroad.

And, the party of the first part, hereby grants and conveys to the parties of the last part, their successors and assigns, all the right, title and interest of the said party of the first part in said East 42nd Street, and the land forming the bed

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thereof, and the easements therein, appurtenant to said premises, which are or may be necessary for the construction, maintenance and operation of an elevated railroad in said street, as the same is now constructed, maintained and operated, except as hereinafter stated; and excepting, however, the right, title and authority of the party of the first part, its successors and assigns, to run and operate cars on said streets or avenues, or any portion thereof, in front of said premises, and the right to operate cars on said streets and avenues, or any portion thereof, by the motive power